Supreme Court, U.S.
FILED

02 10 63 JAN - 9 2003

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT JOHN BRADY,

Petitioner,

v.

JO ANNE B. BARNHART,
Commissioner of the Soeial Security Administration,

Respondent.

On Petition for a Writ of Certiorari

To the United States Court of Appeals

For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Robert John Brady
7450 Olivetas Ave., D-342
La Jolla, California 92307-4930
(858) 450-5342
Attorney in Propria Persona

36 pp

QUESTIONS PRESENTED

1. Whether, in the enactment, enforcement, and interpretation of the Administrative Procedure Act (APA), the government of the United States, the Legislative, Executive, and Judiciary, materially breached the United States Constitution by failing to comply with the core structural concept of the separation of powers, as described in the Proceedings of the Constitutional Convention and in The Federalist Papers and under such explicit provisions as Articles I, II, and III and the Ninth and Tenth Amendments and by the obvious failure to utilize the Article V procedures for amendment rather than the statutory method used.

2. Whether the res judicata of an Iowa State Court judgment of insanity and involuntary commitment for an indeterminate time, with a legal and equitable basis for tolling under Iowa and California law, entitles Petitioner to qualify under the Social Security Act for timely current insured status, special insured status, periods of disability and earnings record freeze or, on the contrary, under Social Security Ruling 79-2c, complete forfeiture of all disability benefits and nearly all retirement benefits by over ruling tolling in all States despite due process, equal protection of the Fifth and Fourteenth, retained and reserved rights under the Ninth and Tenth Amendments and Congressional intent in the Social Security Act.

3. Is the State of Iowa the responsible party for Petitioner's resulting loss of rights and benefits without due process and equal protection of law?

4. Whether it is good behavior for the Judiciary under Article III to traditionally ignore the effect of the Administrative Procedure Act, 5 U.S.C. Sec. 551 et seq.,

upon the Constitutional Separation of Powers and the absolute necessity of an Article V Amendment for such a structural alteration to the Constitution effecting enforcement of all parts of the Constitution; e.g., Articles I through VI, Amendment VII, IX, and X and the enforcement of mandatory Federal statutes, [Sec. 201 of the Evidence Code, 28 U.S.C. Sec. 1738) and interpretation of the Social Security Act, 42 U.S.C. Secs. 416(i), 421, 423, in this case.

TABLE OF CONTENTS

QUESTIONS PRESENTED I
TABLE OF AUTHORITIES ii
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1
STATEMENT 4
REASONS FOR GRANTING THE PETITION 12
I. Alexander Hamilton's View 12
II. John Marshall's View 13
Three-Branch Usurpation 13
IV. One Branch With Special Responsibility 17
V. George Mason's View 19
VI. Is It Possible The Supreme Court Does Not Care For Federalist 78? 24
VII. Does A Breached Constitution Lead To Boldness In Other Areas Of Law And Governance 26
VIII. Is Eleventh Amendment Immunity Waived If Not Timely Claimed? 27
IX. Some Will Say Necessity Was The Mother Of Invention 28
CONCLUSION 29

TABLE OF AUTHORITIES

Cases

Abel v. Abel, 245 Iowa, 907, 65 N.W.2d 68 (1954). 6
Bush v. Gore, 531 U.S. 98 (2000).....27
Chevron USA Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).....15
Cohens v. Virginia, 6 Wheat. 261 (1821) 13
Dred Scott v. John F. A. Sandford, 60 U.S. 393 18
Gatliff v. Commissioner of Social Sec. Admin., 172 F.3d 690, 695 n. 2 (9th Cir. 1999 7
Heckler v. Edwards, 465 870, 873 n. 3, 104 S.Ct. 1532 7
In re Ost's Estate, 211 Iowa 1085, 235 N.W. 2d 70 (1931) ..6
Johnson v. United States, 572 F.2d 697, 699 (9th Cir. 1978) 8
Schweiker v. Hansen, 450 U.S. 785, 790, 101 S.Ct. 1468, 1472, 67 L.Ed.2d 685 (1981). 9
State v. Allen, 166 N.W.2d 752 (1969).....6
Yeiter v. Secretary of Health & Human Services, 818 F.2d 8, 9-10 (6th Cir. 1987).....8

Statutes

5 U.S.C. Sec. 551 8,10,11,13,17,18
5 U.S.C. Sec. 3331 3,9,18
20 C.F.R. Sec. 402.35.....7
20 C.F.R. Sec. 404.320(e) 5
28 U.S.C. Sec. 1254(1).....1,7
28 U.S.C. Sec. 1331 4
28 U.S.C. Sec. 1738 3
42 U.S.C. Sec. 405(g).....4
42 U.S.C. Sec 416(i).....3
42 U.S.C. Sec. 421(a)(1.....3
42 U.S.C. Sec. 421(i)(1).....3
42 U.S.C. Sec. 423 4

42 U.S.C. Sec. 423[c][1][B].....3
42 U.S.C. Sec. 423(d).....3

Constitutional Provisions

Article I.....1,27
Article II.....2
Article III.....2
Article IV.....2
Article V.....10,11,12,17,23,28
Article VI.....2
Fifth Amendment.....2
Seventh Amendment.....8
Ninth Amendment.....2
Tenth Amendment.....3
Eleventh Amendment.....3,27,28
Fourteenth Amendment.....3
U.S. CONST. art. II, sec. 1, cl. 7.....2,17
U.S. CONST. art. V.....11,12
U.S. CONST., art. I, sec. 2.....20
U.S. CONST., art. I, sec. 2, cl. 5.....22
U.S. CONST., art. III, sec. 1. cl. 2.....21
U.S. CONST. amend. IX.....2
U.S. CONST. amend. V., sec. 1, cl. 4.....1
U.S. CONST. amend. X.....3
U.S. CONST. amend XI.....3
Social Security Ruling 79-2C.....26

Other Authorities

Max Weber, H. H. Gerth and C. Wright Mills, translated and edited (New York, 1946), pp. 118-28, 147ff.....28
Robert A. Dahl, Public Affairs Report, University of California, Berkeley, Vol. 40, No. 6, November 1999 28
Max Weber, Ed. H.H. Gerth and Wright Mills.....28

The Federalist Papers, Federalist 47, The Particular Structure of the New government and the Distribution of Power Among Its Different Parts, Author: James Madison. 11
The Federalist Papers, Federalist 78, The Judiciary Department, Author: Alexander Hamilton.....24,25
The Debates of the Federal Convention of 1787.....20
Deschler's Precedents, Vol. 3, Ch. 14 Sec. 3.7.....23

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., infra, 3a-4a) is unreported. The order of the district court (App., infra, 7a-8a) is unreported. The report and recommendation of the Magistrate Judge (App., infra, 9a-16a) is unreported. The opinion of the administrative agency (App., infra, 42a-60a) is unreported.

JURISDICTION

The court of appeal's judgment was entered on May 29, 2002. A timely petition for rehearing with a suggestion for rehearing en banc was denied on September 11, 2002 (App., infra, 1a). Jurisdiction of the court of appeals was pursuant to 28 U.S.C. Sec. 1291. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1). Justice O'Connor extended the time for filing this petition to and including January 9, 2003 under application A 02-426. The attorney for the Social Security Administration was served in addition to the Solicitor General. The attorney for the Iowa Chief Justice was also served.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I. provides in relevant part: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U.S.CONST. art. I, sec. 1.

Article II. provides in relevant part: "The executive Power shall be vested in a President of the United States of America." U.S. CONST. art. II, sec. 1, cl. 1.

Article II. is further reproduced in relevant part at App., infra, .

Article III. provides in relevant part: "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. CONST. art. III, sec. 1.

Article IV. provides in relevant part: "The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence." U.S. CONST., art. IV, sec. 4.

Article VI. provides in relevant part: "The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution." U.S. CONST., art. VI, sec. 3.

Article VI. is further reproduced in relevant part at App., infra, 61a.

The Fifth Amendment provides in relevant part: "No person shall be deprived of life, liberty, or property without due process of law." U.S. CONST. amend. V., sec. 1, cl. 4

The Seventh Amendment is reproduced at App., infra 60a.

The Ninth Amendment provides: "The enumeration of certain rights shall not deny or disparage rights retained by people." U.S. CONST. amend. IX.

The Tenth Amendment provides: " The powers not delegated to the United States by the Constitution, nor

prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI.

The Fourteenth Amendment is reproduced in relevant part at App., infra, .

5 U.S.C. sec. 3331 is reproduced in relevant part at App., infra, .

28 U.S.C. Sec. 1738 is reproduced in relevant part at App., infra, .

42 U.S.C. Sec 416(i) is reproduced at App., infra, .

42 U.S.C. Sec. 421(a)(1) is reproduced at App., infra,

42 U.S.C. Sec. 421(i)(1) is reproduced at App., infra, .

42 U.S.C. Sec. 423[c][1][B] is reproduced at App., infra, .

42 U.S.C. Sec. 423(d) is reproduced at App., infra, .

The relevant provision of Rule 201(d), Federal Rules of Evidence, is reproduced at App., infra, .

STATEMENT

The jurisdiction of the district court was invoked under 42 U.S.C. Sec. 405(g) (Social Security Act] and pursuant to 28 U.S.C. Sec. 1331 (general federal question jurisdiction.) Although not questioned by the Courts below, it is reasonable to assume that Federal jurisdiction in this case is subject to the prior jurisdiction of an involuntary and indeterminate civil commitment resulting from an Iowa State Court insanity judgment in the unusual circumstances of this case where there has been no valid discharge.

As was prominently declared in each step of the judicial proceedings and as stated in the Petition for rehearing with a Suggestion for Rehearing En Banc:

> "This is a case or controversy involving the separation of powers as it relates to the creation and operation of administrative law in the United States under the written United States Constitution as it should be contrasted to the unwritten British Constitution which is absent the specific constraints in the American document." Petition for Rehearing with a Suggestion for Rehearing En Banc, p. 4.

A. James Madison's View

This case concerns first and foremost the separation of powers, words not explicitly used in the Constitution, but implicit in the first three articles taken collectively. The acknowledged Father of the Constitution, James Madison, fourth President of the United States, described this aspect of the Constitution's novel and complex structure in The Federalist Papers thusly:

> "The constitution of Massachusetts has observed a sufficient though less pointed caution, in expressing this fundamental article of liberty. It declares 'that the legislative department shall never exercise the

executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them.' This declaration corresponds precisely with the doctrine of Montesquieu, as it has been explained, and is not in a single point violated by the plan of the convention." The Federalist Papers, Federalist 47, The Particular Structure of the New government and the Distribution of Power Among Its Different Parts, Author: James Madison.

B. The Case at the District Court:

In the Order Adopting Report and Recommendation, the Hon. Thomas J. Whelan, United States District Court for the Southern District of California, states at page 6:

> "In this case Plaintiff was 62 years old when he first filed for disability benefits in 1993. Accordingly, Plaintiff only qualifies for disability benefits if he can meet the 20/40 requirement outlined in the first subsection above. See 20 C.F.R. Sec. 404.320)e) ...Plaintiff's substantial gainful activity only produced 11 QCs in the forty quarter period prior to Plaintiff claiming disability in 1993 (Tr. 55) Thus, Plaintiff has insufficient quarters of coverage to qualify and Plaintiff may not collect benefits for the periods claimed as a matter of law." [Note: the correct age is 61 at time filed (b. 12/26/31).

In the United States District Court memorandum of points and authorities in support of plaintiff's cross-motion for summary judgment (Social Security) and in opposition to defendant's motion for summary judgment, Petitioner states at p. 15:

"Some Iowa decisions, currently applicable in that state concerning a finding of insanity, are important to consider in this case because the Plaintiff has been under a judgment declaring him insane as a result of his schizophrenia at all relevant time in this case, yet this issue was methodically ignored by the ALJ in this case who made his decision and findings without medical information including that contained in a still viable state court judgment finding of insanity.

"An insane person cannot make a valid grant. Abel v. Abel, 245 Iowa, 907, 65 N.W.2d 68 (1954). One judicially declared insane and found insane by commissioners and committed to a hospital was presumed to be of unsound mind. (In re Ost's Estate, 211 Iowa 1085, 235 N.W. 2d 70 (1931)). When insanity is once established it will be presumed to continue until the contrary is shown, and burden to show is then cast upon the one who asserts a return to sanity. (State v. Allen, 166 N.W.2d 752 (1969).

"A court is required to terminate proceedings and completely discharge a person who has been involuntarily hospitalized for serious mental impairment when the court receives a medical report from the chief medical officer of a mental health facility indicating that the patient has been tentatively discharged. Op. Atty. Gen. (Chickering), Nov. 26, 1980."

In the United States District Court memorandum of points and authorities in support of plaintiff's cross-motion for summary judgment (Social Security) and in opposition to defendant's motion for summary judgment, Petitioner states at p. 18-19:

"Some effective instruction on properly enforcing the full faith and credit statute, as it applies to a state court judgment of insanity, is obviously needed for the huge federal agency that is the SSA. It views state judgments nuisances to

be ignored or, when given a second chance, side-stepped. Perhaps it is a nuisance, a necessary nuisance to go back in time to the 1950's and consider how a legally insane person (unknown to himself) would earn quarters of coverage and file a Social Security disability claim (not aware of the nature of his illness). At that time, Iowa officials were aware of the work problems of the Plaintiff and over the years were charged with knowledge of the operation of the Social Security Act and then need for timely filing a benefits claim."

United States District Court memorandum of points and authorities in support of plaintiff's cross-motion for summary judgment (Social Security) and in opposition to defendant's motion for summary judgment, Petitioner states at pp. 20-21, fn. 21:

> "Social Security Rulings are "final opinions and orders and statements of policy and interpretations" that have been adopted by the Administration. 20 C.F.R. Sec. 402.35 (1999). Once published, these rulings are binding precedent upon ALJs. Gatliff v. Commissioner of Social Sec. Admin., 172 F.3d 690, 695 n. 2 (9th Cir. 1999), citing Heckler v. Edwards, 465 870, 873 n. 3, 104 S.Ct. 1532, 79 L.Ed.2d 878 (1984). The power of Congress has been usurped by this administrative fiat. One can ask where is the case law on this ruling (it appears to be nonexistent). It can be reasonably presumed the rule has been so effective in destroying claimant's cases that there are neither lawyers nor cases to challenge this administrative aggrandizement."

In the United States District Court, Objections to Report and Recommendations, pp. 2-3, Petitioner stated the first separation of powers, Article V and Administrative Procedure objection:

> "The Magistrate Judge's appraisal that there was substantial evidence is inaccurate when plaintiff had neither representation nor an unbiased Administrative

Law Judge, In ignoring judicial notice and lodgment, he simply joined hands with an agency also with dubious legal basis." [reference to footnote 3] footnote 3:) "The Administrative Procedure Act (5 U.S.C. Secs. 551 et seq.) violates the Separation of Powers that is implicit and at the very core of our Constitution, therefore, it requires a constitutional amendment for its enactment, under U.S. Const. Art. V rather than a statute. This is a most serious 'oversight' and the plaintiff alleges the lack of effective agency control."

C. The Case at the Court of Appeal:

In the Brief of Appellant in the United States Court of Appeals for the Ninth Circuit, pp. 32-35, Petitioner stated:

"In this case, all evidence of disability was disallowed including a final judgment of an Iowa Insanity Commission declaring the appellant insane in 1957. The basis of this administrative and judicial exclusion can be traced implicitly and directly to Johnson v. United States, 572 F.2d 697, 699 (9th Cir. 1978) where it was held that incapacity does not excuse failure to file. The Ninth Circuit panel added that Congressional intent is unmistakable: 42 U.S.C. Sec. 402(j)(1) explicitly limits retroactive benefits to one year prior to filing. According to Yeiter v. Secretary of Health & Human Services, 818 F.2d 8, 9-10 (6th Cir. 1987), prior to 1958, there were no retroactive benefits and when Congress amended the statute to allow such benefits, it limited them to twelve months.

"The Sixth Circuit stated, 'there is simply no basis for construing that limitation inapplicable to certain disabilities.' The Court added that although the appellant was under a disability, her guardian or some other person acting on her behalf could have filed an application (to avoid the need for a

retroactive claim). Obviously, for this Appellant, it is the unabashedly reticent State of Iowa who should have filed on his behalf as an adult insane person. In 1981, the United States Supreme Court entered the fray and stated:

"Congress expressly provided in the Act that only one who 'has filed application for benefits may receive them, and it delegated to [the Secretary of Health and Human Services] the task of providing by regulation the requisite manner of application. A court is no more authorized to overlook the valid regulation requiring that applications be in writing than it is to overlook any other valid requirement for receipt of benefits.' Schweiker v. Hansen, 450 U.S. 785, 790, 101 S.Ct. 1468, 1472, 67 L.Ed.2d 685 (1981)."

"It is Appellant's position that he timely filed an application for all Social Security disability insurance benefits and any Medicare related benefits from the time he was first fully insured under the Act, as specially insured before age 31, with subsequent periods of disability. The disability, embodied in the insanity adjudication, is chronic and exists today as it has existed since June of 1954. The lodged DVA file is not irrelevant as held by the Court below in its exclusion of medical evidence and should be a part of this official record if needed. See the administrative record generally. Further, it is Appellant's position that Ninth Circuit decisions holding that incapacity does not excuse failure to file and that Congressional intent limits retroactive benefits to one year prior to filing either do not apply to the Appellant, are too broad in their sweep, grossly misconstrue Congressional intent, read too much into Schweiker, or are constitutionally and statutorily flawed as applied to the Appellant.

"The Appellant filed an application for Social Security disability insurance benefits on November 29, 1993, before age 62, as a parallel claim to a service-connected disability with the Department of Veterans Affairs filed August 15, 1989. In the course of gathering medical data for this claim, the Appellant eventually discovered his involuntary commitment as insane to the Mental Health Institute at Independence, Iowa by the Black Hawk County Insanity Commission, Waterloo, Iowa.

"It is respectfully submitted that Congress would not permit the Social Security Administration to overrule psychiatric expertise in the course of a psychiatric illness. The Ninth Circuit effectively legislated that result by their holding psychotics, who are unfortunately paid-up Social Security 'beneficiaries,' to a standard of reality."

In the Brief of Appellant, United States Court of Appeals for the Ninth Circuit, p. 47, Petitioner renewed his objection under the separation of powers, Article V, and the Administrative Procedure act by stating:

"Lastly, and of overriding importance, is the Administrative Procedure Act (5 U.S.C. Secs. 551 et seq.) itself, this Act clearly required a Constitutional Amendment for its creation but the three branches of government, led by a very small and secretive group, saw to it that the legislation was enacted and signed by a President. The Appellant's problems herein are an outgrowth of the infirmities in this Act and its derogation of the Separation of Powers, implicit and central to the Constitution of the United States."

In the Reply Brief of Appellant, United States Court of Appeals for the Ninth Circuit, p. 1, Petitioner reiterated his objection under the separation of powers, Article V, and the Administrative Procedure Act by stating:

"Much of the administrative law activity in the United States is based upon Social Security disability, it is derived from legislation that plainly requires a constitutional amendment because the separation of powers is illegally (breached.) After over fifty years of the Administrative Procedure Act, where are the cases addressing this issue?"

In the Petition for Rehearing with a Suggestion for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, pp. 2-3, Petitioner makes his strongest objection under the separation of powers, Article V, and the Administrative Procedure Act by stating:

"I. It Must Have Taken a Triumvirate

"1) Article V (Mode of Amendment) of the United states Constitution does not appear in any reported cases as it relates to the Administrative Procedure Act (5 U.S.C. Sec. 551 et seq.). Its mention in such context is conspicuously absent." (reference to footnote 1] "See United States Constitution—Analysis and Interpretation (United States Government printing Office, p. 897, et seq." (end of footnote 1) "In light of the Constitution and the civil and criminal laws of this nation, it is striking, extraordinary, and unusual to the greatest degree that the Administrative Procedure Act could be enacted in 1946 without the passage of a Constitutional Amendment under Article V of the United States Constitution. It is respectfully submitted that, absent such amendment, the Federal administrative proceedings as practiced within the Ninth Circuit, at this time and in this case, violate the implicit core principle of the United States Constitution, the separation of powers. More broadly, much of the statutory and judicial law supporting the structure of present day administrative procedure (within the United States government) does so in direct

derogation of Article V. Article V requires a Constitutional Amendment to accomplish such fundamental changes in the nation's governance."

REASONS FOR GRANTING THE PETITION

I. Alexander Hamilton's View

If ever there comes a time when the very core and fundamental structure of the United States Constitution, the separation of powers, is to be caste aside for an alternative, it is axiomatic that a constitutional amendment is an absolute necessity. Therefore, it is of overriding importance that such radical and far-reaching legislation as the Administrative Procedure Act, which is based on the merger of all three powers, be enacted only upon total compliance with Article V of the Constitution:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate." U.S. CONST. art. V.

Under the doctrine of separation of powers, a fundamental principle is that all acts of officials not derived from the delegated powers of the constitution are null and void from inception, not just from the point at which a court may find them unconstitutional. As a serious infringement of the separation of powers affects all parts of the Constitution, especially Articles I, II, and III, the Constitution is reproduced at App., infra, .

II. John Marshall's View

"We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given, the one or the other would be treason to the constitution.' Cohens v. Virginia, 6 Wheat. 261 (1821) (Chief Justice John Marshall, ignored as dicta).

III. Three-Branch Usurpation

The three branches of the federal government, with the cooperation of the respective States, have materially breached the United States Constitution by usurping constitutional powers belonging specifically to the people and the States without Article V authority in an attempt, not only to amend the constitution by statute, but to change its essential structure embodied in the doctrine of separation of powers by means of the 1946 Administrative Procedure Act, 5 U.S.C. Sec. 551 et seq. as amended.

B. Why and How Has the Constitution Been Breached?

Absent a careful and thoughtful judicial analysis of the need for a constitutional amendment for any change in the structure of the constitution, the Judiciary has moved on almost silently and inexorably to greater influence and control under the Administrative Procedure Act.

In 55 Years, there has been millions of Social Security disability insurance Act cases, but no cases on the necessity

for a constitutional amendment for the Administrative Procedure Act that alters the separation of powers and drives the Social Security Act. Instead, the three branches of government who have fostered the Act benefit from its operation at the expense of Petitioner and other unrecognized victims. During millions of adjudications by the Social Security Administration and other Federal agencies, the following events have occurred:

1) The Legislative branch has created a buffer for citizens' inquiries and complaints through a wide spectrum of agencies, however, far removed from the Executive or Legislative branch. The result shows in the increasing incumbency of elected politicians that has reached historic proportions. The blame for a never-ending host of government miscues can conveniently be laid on the agencies and away from elected officials. Senators and Congressmen appear to be comfortable with this "moat" as pressures discreetly can be brought to bear on the agencies, purportedly without the responsibility. Unfortunately, some members of the Legislative branch are unaware of the derivation of this truly major change in our constitutional practice or the results produced.

2) The executive branch has increased its nominal control over government, generally, by means of the phenomenal growth of the administrative agencies both within and without the executive departments. This interprets into far greater power and influence in Washington mainly at the expense of the States and the people. Control is nominally under the President, the Presidency thereby has greatly gained in influence while losing varying degrees of power to hundreds of agencies. The resulting enormity of the government has significantly increased the President's public relations power which, coupled with improved communication options, has given him a unique line to the people, almost an online relationship.

3) The Judicial branch has shifted much of the judicial business of the nation to administrative agencies that handle literally millions of cases. This has allowed the Judiciary to cull the civil cases and most significantly remove the right to civil jury trial for millions, although directly contrary to the Constitution. The absence of a jury trial assuages legal analysis, greatly reduces judicial knowledge of a case, and abates the case load of the average Federal judge a shocking amount. Most significantly, with this Court's holding in Chevron USA Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the Judiciary effectively steps out of the administrative litigation picture giving near-total discretion to the agencies thereby relieving a meaningful role and tremendous litigation burden from the Judiciary. In the process, agencies have become the alter egos of the Judiciary. Not to be ignored. a lucrative part of the legal business of the nation is now centered in Washington, especially for the large law firms, and away from the States.

C. Issue Avoidance Can Be Disastrous to an Integrated Constitution.

The system of selective issue avoidance with regard to the Administrative Procedure Act and Article V is an unhealthy policy on a supremely important issue. The extreme importance of the need for a constitutional amendment, to alter the Constitution as the Administrative Procedure Act has done, has been Congressionally, Judicially, and Administratively ignored for 55 years. Prosecutors have been intensively indoctrinated.

Because this issue has been swept under the rug for so long, by generations of officials, one cannot help to wonder if they thought it would go unnoticed. This issue is important to the Petitioner because he has been put out of Court and deprived of his security. As a result of the Administrative Procedure Act, a Ninth Circuit judicial opinion was transformed into a Social Security Ruling bringing forth a

Congressionally unintended statutory twist by Judiciary and Agency together further impoverishing unfairly the premium paying disabled in the form of Social Security Ruling 79-2c. Significantly, this case is important because it demonstrates a forfeiture of Social Security disability insurance benefits, to persons involuntarily civilly committed, who possess broad State tolling rights. This discriminatory policy was instituted and enforced by means of a statute waiting since 1946 to be declared unconstitutional, the Administrative Procedure Act.

This individual Petitioner fades in comparison to the many Americans who have given so much, including hundreds of thousands of lives to preserve and protect our constitutional form of government and the freedoms it has guaranteed generations of Americans.

The key to the Constitution of the United States is the separation of powers. It is the citizens' primary protection from an imperial government rather than a sovereign people. How this doctrine is respected or disrespected determines how well each branch of the Federal government and each of the States function in an appropriate built-in competition.

D. Who Would Intentionally Destroy The Very Structure Of The Nation's Greatest Legacy?

Anyone who would take aim with the intent to eliminate the very guts of the United States Constitution is depraved and dastardly. These individuals should not be protected simply because this Court opts out of the separation of powers/constitutional amendment issue. It is respectfully submitted that all branches of the Federal government must be brought into accord with the Constitution and away from the Administrative Procedure Act and the mass justice it has engendered. Who stands on watch here? The Supreme Court of the United States is the proper response because this is a case or controversy.

The Supreme Court could shed significant light on the breach that has occurred by directly comparing the

Constitution to the Administrative Procedure Act. Two important issues to the American people would immediately surface, separation of powers and Article V.

IV. One Branch with Special Responsibility

> Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." U.S. CONST. art. II, sec. 1, cl. 7

A. The Constitution Gives The President A Special Responsibility—To Preserve The Constitution.

In order to preserve the Constitution one must know what it is that is to be preserved. The President's duty is to preserve both the separation of powers and Article V (and the Seventh, Ninth and Tenth Amendments as well.) In Petitioner's lifetime, all Presidents have demonstrated a reverence and understanding of the "Constitution" but there hasn't been a President that has demonstrated a reverence or even much understanding of the separation of powers and that includes their Attorney Generals. Query, whether the Attorney Generals, who did understand the operation of the separation of powers, and certain members of the Supreme Court as well, were intimidated or simply sought continued ignorance of this subject.

President Lincoln, with his humble education, had a deep appreciation of the separation of powers under the Constitution and an excellent understanding of the entire document. The early Presidents all had that comprehensive understanding and most carefully

abided by the separation of powers, President Jefferson and President Madison especially. President George Washington set the stage and the example by being a real stickler in his observance of the separation of powers. Abraham Lincoln's knowledge was put to the greatest test and he showed his mettle. By taking his oath of office literally, he was able to preserve our Constitution at the cost of a Civil War. Not a small part of the reason for this conflict was this Court's inappropriate decision in Dred Scott v. John F. A. Sandford, 60 U.S. 393, 19 How. 393, 15 L.Ed. 691 (1857).)

Presidents of late simply have not understood the separation of powers. Had they understood, they would have immediately dealt with the impostorship, the Administrative Procedure Act. The doctrine is a difficult concept and requires no small amount of concentrated effort. The risk of further failure to understand the operation of the separation of powers for the United States in today's world is simply beyond comprehension.

B. Two Branches, the Legislative and Judicial, with Separate, Plain and Vital Duties

Official duties in government require an oath of office. In the United States, for the oath of office to be meaningful, the Constitution's operation must be known. A person is not born with such knowledge and it isn't available on the local newsstand.

Under 5 U.S.C. Sec. 3331, an individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath:

"I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.' This section does not affect other oaths required by law. "

All members of the Legislative, Executive and Judicial branches of the Federal government, except the President, repeat this very oath. It is a serious oath that is solemnly taken. It is not only the Federal officials who take an oath in support of the Constitution, Article VI provides: "the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution." Therefore, State officials are equally held to support the United States Constitution, therefore, they too must be knowledgeable in their understanding of what the Federal Constitution means. This audience needs, for purposes of their oath, assurance that the constitutional clock is ticking correctly and, if not, why not. This Court is called to task.

Any lesson on how the Constitution works must begin with the separation of powers, as the Constitution does. Any intelligible discussion of how the Constitution is working today must commence with a description of the Administrative Procedure Act and what this statute has done to derogate the constitutional balance under the separation of powers.

V. George Mason's View

The oaths of office of government officials are enforced under the Constitution by means of the power of impeachment. George Mason was instrumental in placing the

impeachment power into our Constitution. He said of it: "No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?" The Debates of the Federal Convention of 1787, Friday, July 20, reported by James Madison, The Avalon Project at Yale Law School.

E. A. The Engine of Enforcement Is the House of Representatives

"The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment." U.S. CONST., art. I, sec. 2

Contrary to contemporary thought, the power of impeachment is vital to the operation of the Constitution. This power resides in the House of Representatives. The key to the power for decades has been the Speaker of the House of Representatives. This person has been a good person to know, especially if you were a President or Supreme Court Justice. Impeachment is indeed an awesome power. Unfortunately for the people and the States in the last century, impeachment has been much more of a power by its nonuse than its use.

How many people are technically subject to impeachment now as compared to the early days of our nation? Back then, when there were relatively few in our government, there were relatively frequent impeachments including a United States Senator. The power is rarely considered today unlike the early years of our nation. Impeachment proceedings were expected and therefore were effective in the early part of our national history to investigate, try and sanction wrongdoers. But there must be safety in numbers for officials because impeachment has long been a rarity while human nature hasn't changed.

Impeachment has been downplayed or shelved for many of the reasons given in modern publications as bothersome, too time consuming, etc. The present Chief Justice has

written a book making a case against the procedure. However, it requires a constitutional amendment to remove or downgrade this provision if any official disagrees. Public relations campaigns do not change the Constitution one iota, however, it could change attitudes of persons, even creating attitudes in conflict with a person's oath of office. The Founding Fathers firmly believed, having dealt with Kings, that impeachment was absolutely vital to the functioning of the Constitution under the separation of powers. This was the enforcement mechanism under the separation of powers.

Does the fact that impeachment is thought to be passé effect this Court in its decision whether or not to risk opprobrium and get into an issue that involves all three branches of our government and the States. Are the members of this Court compelled under their oaths of office to face the principle issue raised by this case or controversy?

The Constitution requires perpetual vigilance with the regular use of the impeachment power. Of course, if the Founding Fathers' principal tool to enforce the separation of powers is impeachment, there is effectively no enforcement.

If the Constitution has been breached in a way that only three branches together could consummate, then judicial "good behavior" is a relevant issue and, it can be assumed, as is a similar standard of behavior for the legislative and executive branches as well.

F. B. Congress Is The Judge Of "Good Behavior."

"The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." U.S. CONST., art. III, sec. 1. cl. 2

What does "good behavior" mean? Congress has never seen fit to define the term and yet the entire Federal Court system hinges upon it. What did the Founding Fathers think

good behavior meant and does their view differ from the present meaning of the term to the Judiciary today? This case asks: would the handling of the Administrative Procedure Act by the Courts be considered "good behavior" to the Founding Fathers? Does this question pose a conflict of interest for the Courts or even worse, incrimination problems based upon 55 years of exposure to a statute that should have been a constitutional amendment? Is not "good behavior" like jurisdiction to the Judiciary, it is fundamental to any Federal adjudication and so essential it can be raised at anytime.

Does the question for the Courts become who judges "good behavior" or has the question evolved to who is it we want to judge "good behavior?"

"The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment." U.S. CONST., art. I, sec. 2, cl. 5,

It appears the Courts have convinced the Congress to delegate its responsibility in this matter of behavior except when criminal charges have been filed. This requires the Executive branch and prosecutorial discretion. Is it because the Courts are thought to be smarter that Congress has done this or is it more likely to be the result of misinformation and lobbying. Absent across-the-board enforcement by Congress on the "good behavior" of members of the Judiciary, our Constitution is placed in jeopardy; i.e., the Administrative Procedure Act..

It is respectfully submitted, on the issue of judging "good behavior" that perhaps members of the Court might have a slightly different outlook on their tenure than perhaps a regularly elected Congressman would have, especially after a Fourth of July speech to his constituents. Courts are not made to serve at the pleasure of Congress but, when Judges misbehave, they are subject to impeachment by Congress. Using the Administrative Procedure Act as an example, perhaps misbehavior of Judges, individually and as a group, is not easily identified or seldom detected. Charges of

misconduct have not posed a significant peril to the Judiciary primarily because impeachment is treated as passé. It appears difficult for many to understand that the supervisory power of the Courts is not the separation of powers by any manner of means.

The whole picture presented by this case gives the appearance of a serious behavioral problem for all branches of the Federal government and the State Governments under the United States Constitution. The Federal Judiciary and the State Judiciaries, as well as all attorneys, are ethically charged with avoiding even the appearance of impropriety.

There is no constitutional parallel to the judicial "good behaviour" language under Article III applicable to executive officials or Congressional members and staff. See 3 Deschler's Precedents, Vo. 3, ch. 14, Sec. 3.7, at 429-34. It should not be overlooked, however, although not specifically mentioned in the Constitution, the President, the Congress and the States have behavioral standards as well. Those standards too appear to need some critical clarification, examination and reevaluation. This is where "prosecutorial discretion" comes into play and, in effect, sets the standards. Prosecutorial discretion is a bargaining chip in the Executive's back pocket of enormous influence although there is no mention of it in the Constitution. Good behavior is a constitutional necessity for the Federal Judiciary and a good standard for all governmental officials whether in the Federal or State government.

The Judicial branch is in a position to at least explain its current relationship with administrative agencies. Under good behavior, explaining the necessity of Article V authorization is the more troubling question for the Judiciary.

VI. Is It Possible the Supreme Court Does Not Care for Federalist 78?

G. A. Supreme Court's Failure to Cite The Federalist Papers Is a Serious Misstep

"Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

"This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging

be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

"The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing." The Federalist Papers, Federalist 78, The Judiciary Department, Author: Alexander Hamilton

Perhaps members of the Court did not feel up to contending with James Madison and Alexander Hamilton in The Federalist Papers or Thomas Jefferson or George Mason for that matter in the Proceedings of the Constitutional Convention. The Federalist Papers plainly reflect the

commonly held view at the time of the Founding Fathers that the Judicial branch was the weakest branch. Therefore, the question becomes relevant whether the treatment the Judiciary has accorded the Administrative Procedure Act was used to enhance the Court's power vis-à-vis the other branches and the States?

The Petitioner has suffered the following harm, such as disregard of his Seventh Amendment right to a civil jury trial, the implementation of Social Security Ruling 79-2c over Congressional intent, the disregard of State judgments and res judicata and the disregard of State tooling and Social Security Act provisions requiring State determinations of disability and protection of doctor patient relationship, all derived from the Administrative Procedure Act.

H. B. It Is Time for the Supreme Court to Act

Once the Administrative Procedure Act was enacted with the aid of the Attorney General and Chief Justice in 1946, the Supreme Court, a branch of government that does understand the Administrative Procedure Act, has failed to rule on its constitutionality under the separation of powers while agencies were established and existing agencies, expanded.

VII. Does a Breached Constitution Lead to Boldness in Other areas of Law and Governance

I. A. Branching Out With Immunity

The growth of power within the Supreme Court of the United States and the Federal Judiciary has, in no small part, resulted from the erosion of States' power over decades. The Administrative Procedure Act has been central to this movement. There are other areas of governmental functioning that indirectly affect the manner in which the Petitioner's case has been handled that would remain indifferent if not mentioned. Not the least of these areas is the

subject of immunity that, like a veto, is raw power. Immunity is referred to only briefly in Article I and then exclusively in regard to Congress. The gradual development and spread of absolute and qualified immunity civilly and criminally to officials far and wide, including the reach and scope of the speech and debate clause of Article I, can be raw, unanswerable Federal, State, or local power

J. B. States Have Been Intimidated by Federal Courts

1. If not understood, it is thought by a number of attorneys that the Supreme Court bullied Florida in Bush v. Gore, 531 U.S. 98 (2000) treating the matter as an equal protection question rather than a political question that normally requires abstention. Regardless, this was a particularly strong statement from this Court over the other two branches and the State of Florida.

2. The power to treat campaign finance as a First Amendment issue rather than a political question gives broad judicial control over both the States and the Federal government.

VIII. Is Eleventh Amendment Immunity Waived if Not Timely Claimed?

The Eleventh Amendment states: "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

This immunity is actually in the Constitution and is relevant to this case because the Chief Justice of Iowa has been served as a result of the Petitioner's relationship to the Iowa Court system and Iowa law. Iowa has behaved badly in this case, a secret involuntary commitment in 1957 and a secret "discharge" in 1993—very strange, indeed. The Iowa

Constitution bars the Petitioner from voting and the U.S. Constitution guarantees it. Iowa involuntary commitment is an important part of this case, it is determinative of Social Security benefits if the intention of Congress is recognized but Iowa doesn't want to talk about it. The Court's have characterized the Eleventh Amendment as defensive and not applicable unless claimed.

IX. Some Will Say Necessity Was The Mother Of Invention

In these extensions of power, others might say such extensions are further examples of usurpation as characterized by the presence of the Administrative Procedure Act over a number of years. From a more philosophical approach, Robert A. Dahl would say, "Two epochal changes in perspective within half a century after the end of World War II: global expansion of both democracy and market capitalism…As the culture of consumerism gains predominance…the function of all "governments," whether "public" or "private", is simply to maximize the satisfactions of individual consumers of goods and services." Robert A. Dahl, Public Affairs Report, University of California, Berkeley, Vol. 40, No. 6, November 1999. Max Weber (b. 1864, d. 1920) would say he regards bureaucracy as supremely efficient, but regards its inevitable triumph with distaste. From Max Weber, H. H. Gerth and C. Wright Mills, translated and edited (New York, 1946), pp. 118-28, 147ff. Another might say, one reason for our current predicament is that Article V of the Constitution effectively gives small congressional minorities a veto over constitutional amendments.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Robert John Brady

7450 Olivetas Ave., D-342
La Jolla, California 92037-4930
Attorney in Propria Persona
January 2003

Supreme Court, U.S.
FILED

02 10 63 JAN - 9 2003

OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT JOHN BRADY,

Petitioner,

v.

JO ANNE B. BARNHART,
Commissioner of the Social Security Administration,

Respondent.

On Petition for a Writ of Certiorari

To the United States Court of Appeals

For the Ninth Circuit

APPENDIX

Robert John Brady
7450 Olivetas Ave., D-342
La Jolla, California 92307-4930
(858) 450-5342
Attorney in Propria Persona

0/6 pp

APPENDICES

Opinions, Orders, Findings, etc., Entered in Conjunction with the Judgment Sought to be Reviewed

A. 9TH CIRCUIT ORDER DENYING REHEARING *EN BANC* (SEP. 11, 2002) 3a

B. MEMORANDUM 9TH CIRCUIT (MAY 29, 2002) AFFIRMING ADMINISTRATIVE FINDINGS.....5a

C. 9TH CIRCUIT ORDER AND MEMORANDUM DISMISSING COMPLAINT (MAY 17, 2002) 7a

D. 9TH CIRCUIT ORDER (NOV. 8, 2001).....9a

E. DISTRICT COURT ORDER ADOPTING REPORT AND RECOMMENDATION (JUN. 29, 2001) 11a

F. DISTRICT COURT REPORT AND RECOMMENDATION.....19a

G. SOCIAL SECURITY ADMINISTRATION, FALLS CHURCH VA OFFICE OF HEARINGS AND APPEALS, REFER TO 480-28-2869, LETTER TO ROBERT BRADY, DATED MARCH 22, 2000 .....41a

H. SOCIAL SECURITY ADMINISTRATION, SAN DIEGO.CA OFFICE OF HEARINGS AND APPEALS, REFER TO: 280-28-2869, LETTER TO ROBERT BRADY, DATED NOVEMBER 20, 1997 .....43a

I. SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS DECISION NOV. 20, 1997).....47a

J. CONSTITUTIONAL MATERIAL.....62a

K. RELEVANT STATUTORY PROVISIONS.....64a

L. STATUTES.....65a

APPENDIX

A. 9th Circuit Order Denying Rehearing *en banc* (Sep. 11, 2002)

UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

FILED
SEP 11 2002
CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

ROBERT JOHN BRADY Plaintiff-Appellant	)	NO. 01-56293
	)	D.C. No. CV-00-01029-TJW
v.	)	
JO ANNE B. BARNHART, Commissioner of Social Security,	)	Southern District of California, San Diego
	)	ORDER
Defendant-Appellee.	)	

Before: FERNANDEZ, RYMER and WARDLAW, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed appeal.

APPENDIX

B. Memorandum 9th Circuit (May 29, 2002) Affirming Administrative Findings.

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
May 29 2002
CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

ROBERT JOHN BRADY Plaintiff-Appellant,	)	No. 01-56293
	)	D.C. No.
v.	)	CV-00-01029-TJW
JO ANNE B. BARNHART, Commissioner of Social Security, Defendant-Appellee.	)	MEMORANDUM

Appeal from the Unites States District Court for the Southern District of California Thomas J. Whelan, District Judge, Presiding

Submitted May 13, 2002*

Before: FERNANDEZ, RYMER, and WARDLAW, Circuit Judges.

Robert John Brady appeals the district court's summary judgment affirming the Commissioner of the Social Security Administration's denial of his application for Title II Social Security disability insurance benefits. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo the district court's decision, and we review for substantial evidence and legal error the Administrative Law Judge's ("ALJ") decision. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). We affirm.

The ALJ's finding that Brady lacked insured status as of the date he alleged the onset of his disability is supported by substantial evidence. *See Harvel v. Chater*, 87 F. 3d 371, 372-73 (9th Cir. 1996).

We decline to consider Brady's remaining contentions because he failed to raise these issues before the ALJ or the Appeals Council. *See Meanel v. Apfel*, 172 F. 3d 1111, 1115 (9th Cir. 1999).

All pending motions denied.

AFFIRMED.

---

* Jo Anne B. Barnhart is substituted for her predecessors, as Commissioner of the Social Security Administration, pursuant to Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except a may be provided by 9th Cir.R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

APPENDIX

C. 9th Circuit Order and Memorandum Dismissing Complaint (May 17, 2002)

JUDICIAL COUNCIL

FOR THE NINTH DISTRICT

FILED
MAY 17 2002
CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

In re Charge of	)	No. 02-89018
	)	
Judicial Misconduct	)	ORDER AND
	)	MEMORANDUM
	)	
_____	)	

Before: Schroeder, chief Judge

A complaint of misconduct has been filed against "any or All of the Court of Appeals Judges and Judicial Council of the Ninth Circuit." Administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. § 372(c).

Complainant, a pro se litigant, directs his complaint to "Any or All of the Court of Appeals Judges and Judicial

Council of the Ninth Circuit," alleging that the courts provide inadequate notice and employ inadequate means of controlling records from Social Security Administration appeals. He contends that the Ninth Circuit is "literally setting up records in social security disability cases to gain almost automatic affirmance for the Social Security Administration." Complainant fails to see "why a valid request that all records be transmitted to the Ninth Circuit from the District Court in a timely manner has been totally ignored." Additionally, he asks why such a request is "routinely interpreted to exclude, in a Social Security case, the vital original administrative record and many other important records as well."

Misconduct Rule 2(b) requires specificity in the statement of facts. By failing to identify the specific judge or court complained against, complainant has not complied with the basic requirements. Moreover, the charges appear pertain to the actions of the Social Security Administration staff and of unidentified district court staff. This complaint procedure applies only to federal judges. Misconduct Rule 1(d). Complainant should address issues of missing records with the appropriate supervisor, such as the clerk of court and, if then necessary, the chief judge of that court.

COMPLAINT DISMISSED.

/s/_____

Chief Judge

APPENDIX

D. 9th Circuit Order (Nov. 8, 2001)

UNITED STATES COURT OF APPEALS

FOR THE NINTH DISTRICT

FILED
NOV 8 2001
CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

ROBERT JOHN BRADY	)	NO. 01-56293
	)	
Plaintiff-Appellant	)	D.C. No. CV-00-1029-TJW
v.	)	Southern California
	)	
WILLIAM S. HALTER, Commissioner of the Social Security,	)	ORDER
	)	
Defendant-Appellee.	)	

Before: KLEINFELD and McKEOWN, Circuit Judges.

William S. Halter is substituted for his predecessor, Kenneth S. Apfel, as Commissioner of the Social Security Administration. *See* Fed. R. App. P. 43(c)(2). The Clerk shall amend the docket to reflect the substitution shown in the above caption.

Appellant's motion to join Chief Justice Louis A. Lavorato of the Supreme Court of the State of Iowa, as an indispensable party to this appeal, is denied. No motions for reconsideration, modification, or clarification of this denial shall be filed or entertained.

The briefing schedule is reset as follows. Appellant's opening brief is due December 12, 2001. The answering brief is due January 11, 2002; and the optional reply brief is due within 14 days after service of the answering brief.

In addition to serving a copy of this order on the parties, the Clerk shall also serve a copy on Chris Odell, Esq., Iowa Department of Justice, Hoover State Office Building, 1300 East Walnut Street, Des Moines, Iowa 50319.

APPENDIX

E. District Court Order Adopting Report and Recommendation (Jun. 29, 2001)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FILED
JUN 29 2001
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY /S/_____ DEPUTY

ROBERT JOHN BRADY Plaintiff,	)	CASE NO. 00-CV-1029 W(JFS)
v.	)	ORDER ADOPTING REPORT AND RECOMMENDATION
KENNETH S. APFEL, Acting Commissioner of Social Security, Defendant.	)	

Plaintiff Robert John Brady ("Plaintiff") brought this motion for reversal and/or remand pursuant to § 205(g) of the Social Security Act. See 42 U.S.C. § 405(g). Plaintiff seeks judicial review of the Defendant Commissioner of Social Security's (the "Commissioner") final decision to deny Plaintiff's benefits. Defendant filed a cross-motion for

summary judgment. Plaintiff is an attorney proceeding pro se. Defendant is represented by counsel. The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(s.1).

I. PROCEDURAL BACKGROUND

On November 20, 1997 Plaintiff sought disability insurance benefits which were eventually denied by and Administrative Law Judge ("ALJ"). On May 19, 2000 Plaintiff filed this action for judicial review under 42 U.S.C. §§ 405(g)[1] and 1383(c)(3). On May 23, 2000, this case was referred to the Honorable James F. Stiven, United Stated Magistrate Judge, for a Report and Recommendation ("Report"). On November 1, 2000 Defendant filed a motion for Summary judgment seeking to affirm the decision for the ALJ. On December 21, 2000 Plaintiff filed an opposition to Defendant's motion for summary judgment and filed a cross-motion for summary judgment.

On May 2, 2001, Magistrate Judge Stiven issued the Report advising this Court to deny Plaintiff's motion for summary judgment and grant Defendant's cross-motion for summary judgment. The parties were permitted to filed objections no later than June 1, 2001. On May 25, 2001 the Court accepted Plaintiff's objection to the Report as timely.

---

[1] "Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party...may obtain a review of such decisions by a civil action... brought in the district court of the United States... The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing. The findings of the Commissioner... as to any fact, if supported by substantial evidence shall be conclusive..." 42 U.S.C. § 405(g)

II. LEGAL STANDARD

The duties of the district court in connection with a magistrate judge's report are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court "must make a de novo determination of those portions of the report ... to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." FED. R. CIV. P. 72(b); United States v. Raddatz, 447 U.S. 667, 676 (1980); see also United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989).

(I) ANALYSIS

Having read and considered the papers submitted, including Plaintiff's objections to the Report, the Court concludes that the Report presents a well reasoned analysis of the issues raised by the parties. The Report correctly determined that Petitioner's cross-motion for summary judgment should be denied and Defendant's motion for summary judgment should be granted.

A. PLAINTIFF'S OBJECTIONS ARE IMPROPERLY FRAMED

As a preliminary matter, the Court must address Plaintiff's failure to provide specific written objections to the Magistrate Judge's Report. On May 25, 2001 Plaintiff filed objections to the Report, but did not *specifically* object to any portion of the Report.

It is well settled under Rule 72(b)[2] of the Federal Rules of Civil Procedure that a district judge may adopt those parts of a magistrate judge's report to which no specific objection is

---

[2] "The district judge to whom the case is assigned shall make a de novo determination upon the record ... of any portion of the magistrate judge's disposition to which *specific* written objection has been made...." FED. R. CIV. P. 72(b) (emphasis supplied).

made, provided they are not clearly erroneous. See Thomas v. Arn, 474 U.S. 140, 153 (1985) ("It seems clear that Congress would not have wanted district judges to devote time to reviewing magistrate's reports except to the extent that such review is requested by the parties."). A plaintiff bears the responsibility of specifically setting forth which of the magistrate judge's findings the plaintiff contests. See FED. R. CIV. P. 72(b). The Ninth Circuit has held that a pro se litigant's objection fails when it contains only conclusionary allegations. See Simpson v. Lear Astronics Corp., 77 F.3d 1170, 1175 (1996) ("[C]ourts of appeals may ... deny appellate review for failure to object to a magistrate judge's legal recommendations on a dispositive motion."). Similarly, a magistrate's report in a social security disability benefits case is entitled to approval where the claimant made broad, unfocused objections. See Sackall v. Heckler, 104 F.R.D. 401, 402-403 (1984).

In the present case, Plaintiff does not point to any specific recommendations in the Report that Plaintiff believes are in error. Instead, Plaintiff broadly argues the issue of his mental condition. The Report specifically points out that Plaintiff does not have sufficient quarters of coverage necessary to be eligible for disability benefits. A quarter of coverage (QC) is the basic unit of social security coverage used in determining a worker's insured status. 20 C.F.R. § 404.140(a). QC Credit is based on earnings paid into social security. See id. Plaintiff did not have sufficient QC for disability with the exception of one period from 1958-1968. (Tr. 55)[3] Unfortunately, Plaintiff did not file a complaint

---

[3] Prior to 1977 QC was based on $50 of earnings paid to Social Security per quarter of a year. After 1977 earnings were reported annually and apportioned to quarters to qualify for coverage. 20 C.F.R. § 404.140(b)(c).

within the 12/36 month period as required by statute. See 20 § C.F.R. 404.320.[4]

Plaintiff engaged in substantial gainful activity from 1973 through 1976.[5] The resumption of substantial gainful activity terminates the period of disability and restarts the clock for coverage requirements. See 20 § C.F.R. 404.130. Plaintiff does not contest any of these issues, nor could he.

While Plaintiff's objections tangentially touch on the subject of coverage, Plaintiff does not contest any of the Magistrate Judge's findings regarding coverage. In fact, Plaintiff argues everything but the coverage issue.[6] Sackall clearly held that a magistrate judge's report in a social security disability benefits case was properly adopted after the claimant made unfocused objections to the report. Sackall, 104 F.R.D. 401.

This Court likewise finds that Plaintiff's objections have not met the burden of specificity as a matter of law. The Report correctly determined that Plaintiff was properly denied Social Security benefits.

(II) PLAINTIFF'S OBJECTIONS FAIL ON THE MERITS

---

[4] In 1993, Plaintiff filed a claim for disability benefits six years after Plaintiff's filing deadline had passed. (Tr. 11)

[5] Substantial gainful activity is determined by the amount of earnings derived from work activities coupled with numerous other factors as defined in 20 C.F.R. 404.1574.

[6] Plaintiff raises numerous issues, including: (1) Mr. Brady's commitment by the Iowa Court without his knowledge; (2) whether the commitment decision of the Iowa court should be given full faith and credit thereby conclusively determining his insanity; and (3) the application of 42 U.S.C. § § 216(I) and 223 discriminate against the disabled in violation of the Americans with Disabilities Act which does not meet its burden as a matter of law.

In addition to its procedural shortcomings, Plaintiff's case fails on the merits. Plaintiff contends that he is entitled to Social Security Disability Benefits under the Social Security Act §§ 216(i) and 223. Specifically, Plaintiff claims that he has sufficient quarters of insurance coverage to warrant an award of benefits. The Court disagrees.

The eligibility requirements for Social Security benefits are well established. See 20 C.F.R. §§ 404.315(a)(1), 404.320(b)(2). Section 404.130 specifically sets forth the requirements necessary to establish disability benefits coverage. There are four different ways in which an individual can be eligible for disability benefits.

First, "[a]n individual shall be insured for disability benefits in any month if ... he has not less than 20 quarters of coverage during the 40 quarter period which ends with the quarter in which such month occurred." 20 C.F.R. § 404.130(b); see also Austin v. Shalala, 1995 WL 150056 *2 (N.D. Cal. Mar 28, 1995). Second, if an individual is disabled before age 31 and has QCs in at least one half of the quarters during the period beginning with the 21st birthday and ending with the 31st birthday, the individual should be insured. See 20 C.F.R. § 404.130(c). Third, a claimant can secure benefits when a period of disability is established prior to age 31 and claimant becomes disabled again at age 31 or later.[7] See 20 C.F.R.§ 404.320(d). Fourth, statutorily blind individuals also qualify. See 20 C.F.R. § 404.320(e).

In this case Plaintiff was 62 years old when he first filed for disability benefits in 1993. Accordingly, Plaintiff only qualifies for disability benefits if he can meet the 20/40 requirement outlined in the first subsection above. See 20 C.F.R. § 404.130(b). Plaintiff has shown that he has been

---

[7] Additionally, Plaintiff has quarters of coverage in at least one half of the calendar quarters in the period from Plaintiff's 21st birthday and the period in which the disability begins, up to a maximum of twenty QCs out of 40. See 20 C.F.R. § 404.320(d).

disabled at times, but the record also reveals that he has had gainful employment at various times throughout the past forty-eight years.[8] (Tr. 204-213.) In order to secure benefits, the social security regulations state: "you must have at least 20 QCs in the 40 quarter period ending with that quarter" where the disability starts. 20 C.F.R. § 404.320. Plaintiff's substantially gainful activity only produced 11 QC's in the forty quarter period prior to Plaintiff claiming disability in 1993. (Tr. 55) Thus, Plaintiff has insufficient quarters of coverage to qualify and Plaintiff may not collect benefits for the periods claimed as a matter of law.

(III) CONCLUSION AND ORDER

In light of the foregoing, the Court **OVERRULES** Plaintiff's objections and **ADOPTS** the Report in its entirety. The Court **GRANTS** Defendant's motion for summary judgment (Doc. No. 11) and **DENIES** Plaintiff's cross-motion for summary judgment (Doc. No. 13). The Clerk of Court shall close the district court case file and terminate this appeal.

IT IS SO ORDERED.

DATE: June 28, 2001

/s/

Hon. THOMAS J. WHELAN
United States District Court
Southern District of California

CC: ALL PARTIES

---

[8] Additionally, Plaintiff has quarters of coverage in at least one half of the calendar quarters in the period from Plaintiff's 21st birthday and the period in which the disability begins, up to a maximum of twenty QCs out of 40. See 20 C.F.R. § 404.320(d).

HONORABLE JAMES F. STIVEN, UNITED STATES MAGISTRATE JUDGE

A. APPENDIX

F. District Court Report and Recommendation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
01 MAY-2 PM 12:23
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY
Signed /s/ A. Daniel, Deputy

ROBERT JOHN BRADY, SSN: 480-28-2869 Plaintiff, v. KENNETH S. APFEL, Commissioner of Social Security, Defendant.	)	Case No. 00cv1029-W **REPORT AND RECOMMENDATION : (1) AFFIRMING COMMISSIONER'S DECISION DENYING DISABILITY BENEFITS; (2) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [11-1]; AND (3) DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT [15-1]**

(I) INTRODUCTION

Plaintiff Robert John Brady has filed a complaint for judicial review under § 405(g) of the Social Security Act ("Act"),[9] of the Commissioner of Social Security's final decision denying his claim for a period of disability and disability insurance benefits under Title II of the Social Security Act, sections 216(I) and 223.[10] Mr. Brady sought disability insurance benefits and was eventually denied by the Administrative Law Judge[11] in a decision dated November 20, 1997. On May 19, 2000, Mr. Brady filed the instant complaint.

On November 1, 2000, Defendant Kenneth S. Apfel, Commissioner of the Social Security Administration, filed a motion for summary judgment. Defendant seeks to affirm the decision of the ALJ. On December 21, 2000, Plaintiff filed an opposition to Defendant's motion for summary judgment and

---

[9] 42 U.S.C. § 405(g) states:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party . . . may obtain a review of such decision by a civil action . . . brought in the district court of the United States.. . . The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner . . . as to any fact, if supported by substantial evidence, shall be conclusive . . .

42 U.S.C. § 405(g) (West 2000).

[10] Sections 216(I) and 223 of the Act are codified in 42 U.S.C. §§ 416(I) and 423 respectively.

[11] The Administrative Law Judge assigned in this case is Edward Steinman. As noted later in this discussion, Plaintiff also makes a claim that the ALJ should be excluded because of demonstrated bias.

filed a cross-motion for summary judgment. Defendant filed a reply to Plaintiff's opposition and an opposition to Plaintiff's cross-motion on January 5, 2001.

This case was referred to the Hon. James F. Stiven, U.S. Magistrate Judge, for a report and recommendation by the Hon. Thomas J. Whelan, U.S. District Judge, on May 23, 2000. Pursuant to Local Rule 7.1(d)(1), this Court took the motions described above under submission on February 23, 2001, without oral argument. After careful consideration of the papers, the administrative record, the facts and the law, this Court **FINDS** and **RECOMMENDS** that the Commissioner's decision denying disability insurance be **AFFIRMED**, that Defendant Apfel's motion to affirm the ALJ's decision be **GRANTED** and that Mr. Brady's cross-motion for summary judgment be **DENIED**.

(II) PROCEDURAL HISTORY

Mr. Brady filed an application for disability benefits with the Social Security Administration ("Administration") on November 29, 1993. (AR at 43).[12] At that time Mr. Brady stated that he became unable to work on January 1, 1986. (Id.) That application was denied on the basis that Mr. Brady did not have enough quarters of insurance coverage under the Act to obtain disability insured status. (AR at 11).[13]

Mr. Brady then filed a request for reconsideration on January 14, 1994 asserting that the decision was wrong and that he did have enough quarters of coverage. (AR at 46). In that request Mr. Brady also claimed that the onset of his

---

[12] "AR" refers to the Administrative Record prepared and submitted by the Social Security Administration in this case.

[13] See discussion at p. 17-19, infra, for analysis of why Mr. Brady was not eligible to obtain disability insured status on January 1, 1986.

disability was January 1, 1954 instead of 1968.[14] This request was denied by the Administration on January 25, 1994 for the same reason Mr. Brady's original application was denied, i.e. he was not eligible for disability insurance because he did not have enough work credits to qualify for coverage as of January 1, 1954.[15] (AR at 49).

On March 23, 1994,Mr. Brady filed a request for a hearing before an ALJ, stating again that he was in fact disabled and that he did have enough quarters of coverage to meet the requirements for disability insurance. (AR at 50).

Mr. Brady then sent several letters to the Social Security Administration regarding his case. The first was sent in April 1994, stating that he was waiting for requested records pertinent to his case and that he was seeking legal representation. (AR at 57). Another was sent in July 1994 complaining that the Administration would not allow him to see the file in his case. (AR at 59-61). He then sent a third letter in April 1995 requesting that the record in his case be developed regarding his disability status. (AR at 64). The ALJ responded in September 1995 explaining the issues in the case and requesting that Mr. Brady inform the Administration if he intended to proceed with the hearing or have the determination be made on the basis of the evidence in the record, without a hearing. (AR at 65-66).

Mr. Brady responded in an undated hand delivered letter requesting more time to review the ALJ's letter and claiming

---

[14] Mr. Brady initially claimed a disability onset date of 1986, but at some point changed that date to 1968. In all of his later documents Mr. Brady claims he became disabled in 1954. As noted later in this report and recommendation, the record reflects that between 1954 and 1986 Mr. Brady had several periods of disability followed by periods where he engaged in substantial gainful activity.

[15] In denying each of these applications, the issue of whether Mr. Brady was in fact disabled was not addressed. He was denied benefits on the sole basis that he did not have enough quarters of coverage to qualify for "insured status."

that the onset of his disability was in 1955, not 1968. (AR at 67-68). Mr. Brady followed that letter with another again changing the onset date to the summer of 1954, and requesting that the Administration obtain records from the Department of Veterans Affairs regarding his disability status. (AR at 69-70). Although Mr. Brady sent more letters setting forth his interpretation of the Social Security statutes, he did not submit any new evidence regarding his earnings record or request a correction in his earnings record. (AR at 12).

On October 20, 1995 the ALJ issued an unfavorable determination, without a hearing, finding that Mr. Brady was not entitled to disability insurance if the alleged onset date was either 1986 or 1968.[16] If Mr. Brady's disability onset date was 1986 the ALJ determined that he did not have enough quarters of coverage as required under sections 216(I) and 223 of the Social Security Act, as amended. If Mr. Brady's onset date was 1968, while he might have had enough quarters of coverage at that time, he had engaged in substantial gainful activity during the period from 1973 through 1976, which would have ended his period of disability, and he would have been required to apply to establish a period of disability within 36 months of the termination of his disability.[17] (AR at 76-81). Mr. Brady appeal this decision to the Appeals Council, claiming that the ALJ failed to develop the record as to his disability status and that he had been denied due process. (AR at 167).

On April 16, 1997,[18] the Appeals Council vacated the decision and remanded the case to provide Mr. Brady an

---

[16] Apparently the ALJ found Mr. Brady's letter claiming an onset date of 1954 did not operate to amend his earlier assertion.

[17] See discussion of period of disability terminating due to substantial gainful activity, *infra*, p. 15-16 and filing deadlines, p. 18.

[18] Mr. Brady spent a considerable amount of time between the earlier denial by the ALJ and his appeal to the Appeals Council

opportunity to review the evidence in his record and offer oral testimony at a hearing. (AR at 225-26).

Mr. Brady then requested and received an annual list of income and employers since 1945. (AR at 137). Mr. Brady objected to the form of the information, requesting that he receive the data in "quarters of coverage" format. (Id.) Mr. Brady also stated that some of the information about his employment history was incorrect. (Id.)

The ALJ then sent a notice to Mr. Brady on June 18, 1997, advising that a hearing would be held in the case on July 14, 1997. (AR at 227). Mr. Brady requested and received a continuance of the hearing, which was rescheduled to August 22, 1997. (AR at 231). On August 20, 1997, Mr. Brady delivered a letter stating that his attorney had withdrawn from his case a week prior to the August 22 hearing and that he was attempting to obtain new counsel. He further stated that he had a right to be represented at the hearing and he was entitled to another continuance to obtain representation. (AR at 235). The hearing was held on August 22, 1997, as scheduled. Mr. Brady refused to testify and once again stated that he did not have counsel. The ALJ then rescheduled the hearing for October 9, 1997, and informed Mr. Brady that he should obtain representation for the hearing or appear without representation. (AR at 13).

Prior to this hearing Mr. Brady sent additional correspondence again requesting information about his employment records and stating that he was planning to see a psychiatrist for an evaluation of his medical condition. (Id.) Later, by an undated hand delivered letter, Mr. Brady stated that his doctor was awaiting some further records that were required in order to evaluate his claim, and that he was

---

attempting to gather information from the Administration regarding his medical records and his employment record.

unsuccessful in obtaining legal representation.[19] Accordingly, he again requested a continuance of the hearing. (AR at 253-254).

The ALJ responded on October 1, 1997, denying Mr. Brady's request for another continuance. The ALJ informed Mr. Brady that the only issue to be determined at the hearing was his insured status, not his disability status. Any evidence or testimony from his psychiatrist would be irrelevant to the issue in this case. The ALJ further informed Mr. Brady that the Administration had no jurisdiction to compel the attendance of his former attorney. Additionally, the ALJ requested that Mr. Brady specify his alleged onset date, as it was not clear from the record which date was to be used in the evaluation of his claim. (AR at 255-256).

Mr. Brady then sent a letter again requesting a continuance. His reasons were that his doctor had not had enough time to prepare for the hearing, he was still waiting for records concerning his disability status and that an investigation of the withdrawal of his former attorney was still pending before the California State Bar. (AR at 266). Mr. Brady sent another letter to the Administration reiterating his request for a continuance and adding a request for the issuance of subpoenas to obtain the testimony of his former attorney and for documents from the Department of Veteran Affairs concerning his disability status. In that same letter, Mr. Brady requested that the ALJ be disqualified from the case citing bias. (Id.) The ALJ then granted another continuance and set the hearing for November 18, 1997. (AR at 291). At that time the ALJ informed Mr. Brady that his request for subpoenas was denied. (AR at 14).

Mr. Brady continued to send letters claiming that his former attorney's testimony was required to demonstrate the

---

[19] Mr. Brady also stated that he was proceeding against his former attorney with the California State Bar and that the Administration should compel his former attorney to attend the hearing.

ALJ's bias, arguing that his medical condition should be developed in the record, and again requesting that the ALJ be disqualified. The hearing was held on November 18, 1997. Mr. Brady appeared without representation and refused to testify, except for specifying a disability onset date of June 1954. (Id.) The ALJ then issued a decision finding that Mr. Brady was not insured for disability benefits as of his alleged onset date of June 1, 1954, and was therefore not entitled to disability insurance benefits or a period of disability under sections 216(I) and 223 of the Social Security Act.[20] (AR at 9-19).

---

[20] In his decision the ALJ articulated the following findings:

(I) 1. The claimant has an alleged disability onset date of June 1, 1954.

(II) 2. The claimant only earned a total of eight quarters of coverage in the forty quarters preceding his alleged disability onset date.

(III) 3. The claimant was under the age of thirty-one at the time of his alleged disability onset date, but he did not earn six quarters of coverage during the twenty-quarter period preceding his alleged disability onset date.*

(IV) 4. The claimant did not request a correction in his earnings record within the time period allowed under the regulations.

(V) 5. The claimant has established that he is entitled to one additional quarter of coverage during the period of February through April 1956 for earnings of $224.10, earnings certified as received by the Railroad Retirement Board.

(VI) 6. The claimant has not established that any other corrections to his earnings record are appropriate.

(VII) 7. The correction to the claimant's earnings record does not affect his disability insured status.

(VIII) 8. The claimant does not have enough Social Security quarters of coverage to be insured for disability.

(IX) 9. The claimant is not entitled to disability insurance benefits or to a period of disability under the Act.

(AR at 18).

(III) FACTUAL BACKGROUND

Mr. Brady was born December 26, 1931. Mr. Brady entered law school and the United States Marine Corps Platoon Leaders Program in or about the year 1953. (Cross-Motion at 9). Mr. Brady claims that during the summer of 1954 he was stricken with schizophrenia while at the officers candidate program. He claims that he returned to law school but left during the semester for intensive evaluation and treatment at a psychiatric hospital. (Id. at 10). Mr. Brady claims that he had worked at a couple of different jobs off and on until 1957 when he was again hospitalized. (Id.) On June 29, 1957 Mr. Brady was adjudicated insane and committed by the Insanity Commission of the Black Hawk County Iowa Court. (AR at 390). Plaintiff then held various jobs for short durations over the next thirty or so years. (Cross-Motion at 11).

In 1997, Plaintiff began seeing psychiatrist Robert Paul Liberman, M.D. (AR at 246). Plaintiff attempted to have Dr. Liberman testify at his hearing before the ALJ, but his request was denied on the basis that any testimony concerning his present disability status was irrelevant to his insured status. (AR at 255-266). Plaintiff has continually attempted to develop evidence in the record demonstrating that he in fact was disabled. These attempts have been consistently denied for the above reason. (AR at 255-256).

(IV) DISCUSSION

a. Legal Standard

i. 42 U.S.C. 405(g)

---

*While findings 2&3 are somewhat confusing because Mr. Brady was only 21 years old in June 1954, the record reflects that he had earnings at the ages of 14, 15 and 16, but nothing for the next five years.

Section 405(g) of the Social Security Act allows unsuccessful applicants to seek judicial review of a final agency decision of the Commissioner. 42 U.S.C. § 405(g) (West Supp. 2000). The scope of judicial review is limited. The Commissioner's denial of benefits "will be disturbed only if it is not supported by substantial evidence or is based on legal error." Brawner v. Secretary of Health and Human Services, 839 F.2d 432, 433 (9th Cir. 1988) (citing Green v. Heckler, 803 F.2d 528, 529 (9th Cir. 1986)).

Additionally, Section 405(g) permits a court to enter a judgment affirming, modifying, or reversing the Commissioner's decision. 42 U.S.C. § 05(G). this reviewing court may also remand the matter to the Social Security Administrator for further proceedings. Id.

2. Substantial Evidence

Substantial evidence has been defined by the Supreme Court as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." **Richardson v. Perales,** 402 U.S. 389, 401 (1972) (quoting Consolidated Edison Co. V. NLRB, 305 U.S. 197, 229 1938). Substantial evidence consists of more than a scintilla of evidence but less than a preponderance. Magallanes v. Bowen, 881 F.2d. at 750 (9th Cir. 1989).

(I) The Parties' Arguments

i. Mr. Brady's Claims

Mr. Brady argues that the ALJ erred by not developing the record in his case to demonstrate his disability status. (Plaintiff's Cross Motion at 14). Specifically, Mr. Brady that the issue of his disability status was necessary to establish his onset date, which in turn was necessary.to whether or not he had enough quarters of coverage. (Id.) Mr. Brady admits

that at the time of the original onset of his disability, June of 1954, he did not have enough quarters of coverage to qualify for disability insurance. However, he claims that while he has been disabled, off and on, from 1954 to the present time, at some point in between he became eligible for disability benefits by obtaining enough "quarters of coverage" to qualify under the Act. (Id. at 18). Thus, he argues that a later onset date "must be established when sufficient quarters of coverage existed for the Plaintiff to be fully insured and disability insured (using earnings records and medical evidence)" (Id.)

Additionally, Mr. Brady makes several arguments which this Court determines are not properly brought under a section 405 g) challenge to a final decision by the Commissioner of Social Security, and therefore will not address.[21]

ii. Defendant's Claims

Defendant argues that the ALJ was correct in his determination that Mr. Brady lacked sufficient quarters of coverage based upon Mr. Brady's alleged disability onset date of June of 1954. Defendant also reiterates the ruling of the ALJ that Mr. Brady's present disabled status is not relevant to the issue in this case, which is Mr. Brady's insured status. (Defendant's Motion at 3).

Defendant also argues that even if Mr. Brady's case is analyzed using a later onset date, i.e. the 1968 onset date which Mr. Brady claimed earlier, and Mr. Brady thereby had

---

[21] Such claims include: Mr. Brady's commitment by the Iowa court was a violation of due process guaranteed by the constitution; the decision by the Iowa court should be given full faith and credit as required by the constitution thereby conclusively determining his insanity; 42 U.S.C. §§ 216 (I) and 223 discriminate against the disabled in violation of the Americans with Disabilities At; and that Social Security Ruling 82-52 and related Social Security Policy deprives Plaintiff of due process of law.

enough quarters of coverage to qualify for insured status at that time, there nevertheless is no basis to remand for further proceedings. This argument is based upon the ALJ's earlier decision denying benefits which found that Mr. Brady's disability ceased when he engaged in substantial gainful activity in 1973. Accordingly, as the ALJ noted, if a disability ceases prior to a claimant's application date, the claimant must file an application for benefits within twelve months after the period of disability ended.[22] (AR at 79) Defendant asserts that under 20 C,F,R, section 404.320(b) (3) that even if r. Brady was unable to file within twelve months due to his mental condition, he then had thirty-six months from the ending of his disability within which to file. Defendant argues that Mr. Brady did not file in a timely fashion to establish a period of disability, and therefore could not be entitled to benefits for that period. In addition, respondent argues that the ALJ correctly determined that Mr. Brady did not have insured status at the onset of disability in 1986. (Reply at 3).

Defendant also argues that Mr. Brady was advised of his right to counsel, and indeed several hearings were postponed in an effort to allow Mr. Brady to obtain legal representation. Defendant argues that the Commissioner has no legal duty to obtain representation on behalf of a claimant. (Id. at 4).

(II) Legal Analysis

1. Medical Evidence is irrelevant to Mr. Brady's Insured Status.

---

[22] The Court notes that had Mr. Brady applied prior to the termination of his disability in 1973 he may have been eligible for benefits for the period beginning in 1968 until he began again engaging in substantial activity. Since Mr. Brady did not apply for disability benefits prior to the termination of his disabling condition, he then had 12 or 36 months (see discussion, infra, on filing deadlines, p. 18) to apply for a period of disability. Had Mr. Brady applied within the statutory time limit, and succeeded in establishing a period of disability, the Administration would then have made a determine whether or not Mr. Brady was entitled to disability benefits for that period.

Initially, the Court must establish whether or not evidence of Mr. Brady's disability status was indeed necessary for the ALJ to determine Mr. Brady's "insured status." Social Security Regulation (SSR) 83-20 states the policy and describes the relevant evidence to be considered when establishing the onset date of disability under Title of the Act. 1983 WL 31249 (S.S.A.).

SSR 83-20 provides that the onset date of disability is the first day that the individual is disabled as defined in the Act and the regulations. Id. At *1. Factors relevant to this determination include the individual's allegation, the individual's work history and medical evidence. Id. Additionally, the regulation provides that a worker cannot be found disabled under the Act unless the insured status is also met at a time when the evidence establishes the presence of a disabling condition. Id.

In applying the relevant factors to the instant case it seems that the first two, Mr. Brady's allegation and work history, are indeed part of the record and are not disputed by either party. The third factor, medical evidence, is where the parties diverge.

The regulation provides that the onset date alleged by the individual should be used if it is consistent with all of the evidence available. If there is a discrepancy between the alleged onset date and the work record or other evide3nce, the record should be developed to determine the onset date. Id. at *3. In this case, Mr. Brady's alleged onset dates are consistent with his earnings records. Further, Defendant does not dispute the fact of Mr. Brady's disability at his claimed onset date of June 1954.

Additionally, as asserted by Mr. Brady, the regulation provides that in the case of hospitalized mental patients the

following should be considered: I) medical evidence in the form of a medical report by the attending physician; ii) Medical history in a hospital report or form; iii) allegations by hospital medical staff; and iv) other non-medical sources. Id. at *4.

Mr. Brady relies on that regulation to demand a review of medical records. However, the evidence that the regulations regard as relevant relates to the hospital records of the claimant where onset of the disability is at issue. Here, even if Mr. Brady is attempting to establish the onset of or even the fact of disability, (which is not in dispute for the relevant periods), he would still not have enough "quarters of coverage" to qualify for insured status.

Additionally, even if the regulations allow for consideration of this evidence in the record, it appears that most of the relevant evidence is already part of the record. There is at a minimum the hospital report and commitment papers from the Iowa hospitalization and commitment. (AR at 380-98). It is also noted that Mr. Brady has not attempted to add any evidence to the record that concerns his hospitalization. Notably, Mr. Brady has not claimed that the ALJ ignor4ed this evidence in making his determination, yet he continues to request that his current medical condition be developed as part of the record. It is unlikely that any evidence of Mr. Brady's current mental condition will affect the alleged onset date of more than forty-five years ago, or any other onset date for that matter. For this reason any testimony by Mr. Brady's psychiatrist or other medical evidence of his current disability status is not relevant to the determination of the alleged 1954 onset date and, therefore, the ALJ's determination that he had not then obtained insured status.

(I) **2. Mr. Brady is not Entitled to a Period of Disability**

Mr. Brady next argues that, although he was not insured as of that onset date, he later became insured, and thereby is entitled to disability insurance.

The Act Provides that a claimant may apply for a period of disability. 20 C.F.R. § 404.320.[23] A claimant may do so even if he/she was not insured during the period,. Id. This section is critical to Mr. Brady's argument. It appears that Mr. Brady is claiming that although he initially became disabled in 1954, and was not insured, he worked enough

---

[23]The pertinent test of 20 C.F.R. §420.320 provides:

(I) (a) General. A period of disability is a continuous period of time during which you are disabled. If you become disabled, you may apply to have our records show how long your disability lasts. You may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(II) (b) Who is entitled. You are entitled to a period of disability f you meet the following conditions:

. . . .

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month of your disability ended.

20 C.F.R. § 404.320

later during certain periods throughout his life that he became insured and he should therefore be able to establish a period of disability.[24]

Section 216(I)(1) of the Act defines the term disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment . . . ." 42 U.S.C. § 416(I)(1). This section has been interpreted to mean that a period of substantial gainful activity will act to terminate a period of disability.[25] This is important in the instant case because, between 1954 and 1988, Mr. Brady apparently went through at least three possible periods of disability followed by periods where he was able to work for a period of years. His disability allegedly began in 1954 but his earnings were substantial from 1958 through 1967.[26] He had no earnings from 1968 through 1972, but again had substantial earnings from 1973 until 1976. He again had no earnings from 1977 until 1983. His earnings over the next five years ranged from approximately $4,000 in 1983, to under $2,000 in 1984, less than $1,200 in 1985 and less than $500 in each of the next two years. Mr. Brady's last reported earnings were $412 in 1988. (AR at 212-13).

It is thus possible that Mr. Brady was indeed disabled from 1954 until 1958, again from about 1968 until 1972, again disabled from 1976 until about 1983, and once again from about 1986 to the present.

Engaging in substantial gainful activity would, however, have acted to terminate each of these alleged periods of

---

[24] See Plaintiff's cross-motion at page 9 n.8.

[25] See Sigmon v. Califano, 617 F.2d 41 (4th Cir. 1980); Brown v. Weinberger, 385 F.Supp. 780, affirmed by 520F.2d 1010 (E.D. Mo. 1974); Smith v. Weinberger, 381 F.Supp. 407, affirmed by 525 F.2d 695 (E.D. Wis. 1974).

[26] All references to Mr. Brady's earnings are found in the Itemized Statement of Earnings contained in the AR at pages 204-08.

disability. The regulations provide guidelines to assist in determining whether a claimant has engaged in substantial gainful activity. 20 C.F.R. § 404.1574. This regulation provides that the primary consideration in evaluating whether a claimant is engaging in substantial gainful activity is the claimant's earnings as reflected in the Social Security work record. 20 C.F.R. § 404.1574(a). The regulation also provides a table with which to compare earnings in any particular year to determine whether the claimant engaged in substantial gainful activity. The table provides the maximum amount a claimant can earn on average per month before the Administration considers the claimant to have engaged in substantial gainful activity.[27]

According to the record Mr. Brady has worked sporadically throughout his life. Under the guidelines of 20 C.F.R. § 404.1574, Mr. Brady engaged in "substantial gainful activity" at various periods in his life between 1955 and 1985. Contrariwise, there were numerous periods of time during these same years when he had no earnings or earnings at a level below that specified to constitute "gainful employment."

While not exactly clear, it is at least possible that Mr. Brady would have been entitled to three past periods of disability: from 1954 to sometime in 1958, from some time in 1968 until he began again engaging in substantial gainful activity in 1973; and again when he was not working from about 1977 to some time in 1983. If Mr. Brady had been entitled to such periods of disability and he had applied for and was awarded a period of disability, that period would be excluded from his record in the calculation of a later insured

---

[27]Table 1 provides that the average monthly earnings in a period of work cannot exceed the following amounts:

Pre 1976	$200	
(I)	1976	$230
(II)	1977	$240

status.[28] This is important because if those earlier periods had been found to be periods of disability, they would be excluded from the calculation of insured status when counting back forty quarters from any later onset of disability. Accordingly, had he previously applied for and received a period of disability, he might have had enough quarters of coverage in 1985 or 1986 to qualify for insured status. Accordingly, if Mr. Brady could now prove that he is still disabled, and he had previously been awarded a period of disability by the SSA, he might have been eligible for disability benefits based on an onset date of 1985 or 1986. However, if Mr. Brady cannot establish he had received prior periods of disability, he does not have enough "quarters of coverage' to qualify for insured status even if 1985 or 1986 is used as the onset date.[29]

The record is clear that no such prior periods of disability have been declared. The only remaining issue, therefore, is whether Mr. Brady is now entitled to establish an earlier period of disability under the Act. In order for Mr. Brady to establish a period of disability he must apply to the SSA. 20 C.F.R. § 404.320(a)[30] The Act is clear on filing deadlines establishing a period of disability. 42 U.S.C. § 416 (I)(2)(F) provides:

---

[28]See supra note 15.

[29] If Mr. Brady's onset date was determined to be 1986, the last year in which he engaged in 'substantial gainful activity', and no prior periods are excluded as periods of disability, he would not have enough quarters of coverage according to SSA guidelines and Mr. Brady's earnings records. Mr. Brady earned nothing from 1977-1982, then earned four quarters of coverage in 1983 and 1984, and two quarters in 1985. Thus, in the previous forty quarters (1976-1985) he only earned fourteen quarters of coverage (including four from 1976) and according to 20 C.F.R. 404.130 a claimant must have at least twenty quarters of coverage in the forty quarter period ending with the quarter of claimant's alleged onset date.

[30]This section is the Administration's published regulation to 42 U.S.C. § 416(i).

[a]n application for a disability determination which is filed more than 12 months after the month in which the period of disability ends shall be accepted as an application for purposes of this paragraph if –

(I) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after January 1968, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application . . . .

42 U.S.C. § 416 (i) (2) (F) (emphasis added).

Even if Mr. Brady's last prior period of disability ended when he again engaged in substantial gainful activity which would be sometime in 1983 or 1984, and the Commissioner determined that he was entitled to the thirty-six month statute of limitations (instead of twelve), he would have had to apply to the SSA for a period of disability, by the most generous calculation, by 1986 or 1987. His first application in this case was in 1993, more than six years after his filing

deadline passed. Any application for an earlier period of disability would be untimely for the same reasons..[31]

Because he has missed these filing deadlines, Mr. Brady's alleged prior periods of disability are not relevant and are not excludable when determining insured status in 1986. The Commissioner correctly determined that Mr. Brady was not eligible for insured status based on the originally claimed 1986 onset date.

In sum, the only way Mr. Brady could now be eligible for disability is if he was insured when he became disabled the last time.[32] The only way Mr. Brady could have been considered to have enough quarters of coverage is if he was able to exclude a prior period of disability from his record. Since the deadline has passed for any application for a period of disability in Mr. Brady's case, he is not entitled to exclude any such period from his record. The ALJ was therefore correct in his original finding that Mr. Brady did not have insured status in 1986.

CONCLUSION AND RECOMMENDATION

Mr. Brady claims that he was disabled due to the onset of schizophrenia in 1954. Mr. Brady then went through alternating periods in his life working for a period of time then not working for a period. Mr. Brady claims that although he was not insured at the onset of his disability in 1954, at some point in his life he worked enough to become insured, and

---

[31]For example, if Mr. Brady alleged an onset date of 1954 or 1968, the period of disability would have ended with period of substantial gainful activity after those dates, and Mr. Brady would have had three years (or perhaps only one year) after the expiration of his disability status to apply for a period of disability.

[32]According to Mr. Brady's own earnings record, he had 26 straight quarters of non-coverage from the second half of 1976 through 1982, and, as noted in n. 21, supra, only 10 quarters of coverage in the 12 quarters between 1983 and 1985. (AR at 54).

then was disabled again, and is therefore eligible for disability benefits under the Act. The thrust of Mr. Brady's argument is (1) that the ALJ erred by not allowing medical evidence of Mr. Brady's disability to be entered into the record and (2) that the ALJ erred in determining his insured status. The ALJ responded that evidence of disability was irrelevant to the issue of whether or not Mr. Brady was insured at the time of onset of disability and that he correctly found that Mr. Brady was not insured at the onset of his disability.

This Court agrees with the ALJ that evidence of Mr. Brady's disability is indeed irrelevant to the current determination. It is undisputed the Mr. Brady was not "insured" in 1954, and, for the above stated reasons, it is irrelevant whether Mr. Brady was in fact disabled either in 1968 or in 1986. In either case the application deadline has passed and he is therefore unable to apply either for disability benefits or a period of disability under the Act. Furthermore, the ALJ has determined, and this Court agrees, that even if Mr. Brady was in fact disabled in 1986, he did not have enough quarters of coverage to qualify for "insured status."

After a thorough review of the record, the papers submitted and the authorities cited therein, and for the reasons set forth above, this court **FINDS** that the Administrative Law Judge's denial of Therefore, the Court hereby RECOMMENDS that the decision of the ALJ be AFFIRMED, Defendant's motion for summary judgment be GRANTED, and Plaintiff's cross-motion for summary judgment he DENIED.

This Report and Recommendation is submitted to the United States District judge assigned to this case, pursuant to the provisions of *2B* --

U.S.C. § 636(h)(1). Within thirty days after this Report the Court shall serve a copy on all parties. The document should be captioned "Objections To Report And Recommendation." A response to the objections shall be served and filed within ten days after service of the objections.

The parties are advised that failure to file objections within the specified time may waive the right to raise those objections on appeal of the Court's order. -

Dated:

Hon. JAMES F. STIVEN

United States Magistrate Judge

cc: Honorable Thomas J. Shelan
All Counsel of Record

B. APPENDIX

G. Social Security Administration, Falls Church VA Office of Hearings and Appeals, Refer to 480-28-2869, Letter to Robert Brady, Dated March 22, 2000

Mr. Robert Brady
7465 Olivetas Ave., #103
La Jolla, CA 92037-4933

Dear Mr. Brady:

Re: Robert Brady vs. Commissioner of SSA
U.S.D.C. for the Southern District of California
Civil Action Number 95-3958-H

We have considered the reasons you disagree with the Administrative Law Judge's decision and all the issues presented in this case. We have concluded that there is no basis under the regulations for the Appeals Council to assume jurisdiction.

Explanation of Our Conclusion

The Appeals Council concluded that your contention, that the Administrative Law Judge should have "adjourned" the case after your attorney representative resigned, is without merit. You were afforded ample time and numerous opportunities to secure new representation. In addition, the record does not support your contention that the Administrative Law Judge displayed any bias toward you. As stated by the Administrative Law Judge, in the hearing decision, evidence regarding your alleged medical impairment, your former representative's resignation, and evidence you wanted secured through subpoenas by the Administrative Law Judge are not

required to reach a proper decision on the only issue that was before the Administrative Law Judge, which was whether you met the disability earnings requirements for entitlement to a period of disability and disability insurance benefits as of June 1954, the alleged onset of your impairment. The Administrative Law Judge's conclusion that the earnings requirements are not met and that you are not entitled to a period of disability and disability insurance benefits is supported by the record and is in accordance with the Social Security Act and regulations.

What This Action Means

- Under Social Security Administration regulations 20 CFR 404.984(b)(2), the Administrative Law Judge's decision is the final decision of the commissioner after remand by the court.

- We will prepare a certified copy of the administrative record and forward it to the United States Attorney for filing with the court. If you have any questions about the court case, you may wish to contact the district court.

Sincerely yours,
/s Peter N. Dowd
Peter N Dowd
Administrative Appeals Judge

APPENDIX

H. Social Security Administration, San Diego.CA Office of Hearings and Appeals, Refer to: 280-28-2869, Letter to Robert Brady, dated November 20, 1997.

Robert Brady
7465 Olivetas Avenue, #102
La Jolla, CA 92037

NOTICE OF DECISION - UNFAVORABLE

I have made the enclosed decision in your case. Please read this notice and the decision carefully.

If You Disagree With The Decision

If you do not agree with my decision, you may file an appeal with the Appeals Council.

How To File An Appeal

To file an appeal you or your representative, if you choose to appoint one, must request that the Appeals Council review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request to the Appeals Council, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

Time To File An Appeal

To file an appeal, you must file your request for review **within 60 days** from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The council will dismiss a late request unless you had good cause for not filing it on time.

Time To Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider **with** your request for review.

How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the code of Federal Regulations, Title 20, Chapter III, Part 404, Subpart J.

If you file an appeal, the Council will consider all of my decision, even the parts with which you may agree. The Council may review your case for any reason. It **will** review your case if one of the reasons for review listed in our regulations exists. Section 404.970 of the regulations lists these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision fully or partially favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

The Appeals Council May Review The Decision On Its Own

The Appeals Council can review my decision even without your request to do so. If it decides to do that, the Council will mail you a notice about its review within 60 days from the date of this notice.

If No Appeal and No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

New Application

You have the right to file a new application at any time, but filing a new application is not the same as appealing this decision. If you disagree with my decision and you file a new application instead of appealing, you might lose some benefits, or not qualify for any benefits. My decision could also be used to deny a new application for insurance benefits, if the facts and issues are the same. So, if you disagree with this decision, you should file an appeal within 60 days.

Your Right To Representation In An Appeal

You may have a lawyer or other person help you in any appeal you file with the Appeals Council. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with an appeal.

If you get someone to help you with an appeal, you or that person should let the Appeals Council know. If you hire

someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past-due insurance benefits to pay towards the fee.

If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The address of the local office that serves your area is 880 Front Street, Room 1-N-8, San Diego CA 92188.

Edward Steinman
Administrative Law Judge

Enclosures

APPENDIX

I. Social Security Administration, Office of Hearings and Appeals Decision (Nov. 20, 1997)

DECISION

IN THE CASE OF	CLAIM FOR
Robert Brady	Period of Disability and Disability Insurance Benefits
Social Security Number	480-28-2869

This case is before the Administrative Law Judge upon remand by the Appeals Council. By order dated April 16, 1997, the Appeals Council vacated the Administrative Law Judge's decision dated October 20, 1995, and remanded the case to the undersigned Administrative Law Judge for further proceedings.

A supplement hearing was initially scheduled for July 14, 1997. The claimant requested a continuance, which was granted. A hearing was thereafter scheduled for August 22, 1997, at which the claimant appeared, but refused to testify. He stated that he was not represented and he left the hearing. The hearing was continued again and rescheduled for October 9, 1997. Before the hearing date, the claimant again requested and received a continuance of the hearing date to obtain counsel. He was notified that the hearing would be held on November 18, 1997 and that no further continuances would be granted. A final hearing was held on November 18,1997. The claimant appeared but refused to testify at that

hearing, repeating that he wished to obtain counsel before proceeding. The Law Judge has carefully considered all the documents identified in the record as exhibits, the testimony at the hearing and arguments presented.

ISSUES, LAWS, AND REGULATIONS

The general issue in this case is whether the claimant is entitled to a period of disability and disability insurance benefits under sections 216(i) and 223 of the social Security Act. The specific issue is whether the claimant has earned enough quarters of coverage to obtain disability insured status. Under the Regulations, a claimant is only entitled to disability benefits and a period of disability if the claimant has enough social security earnings to be insured for disability (20 CFR 404.315(a)(1), 404.320(b)(2).

In order to be insured for disability, a claimant must meet the requirements of one of the four rules applied in determining disability insured status. The first rule requires that the claimant be fully insured and have earned at least twenty quarters of coverage in the forty-quarter period ending with the quarter of the claimant's alleged disability onset date. If the claimant is alleging a disability onset date prior to reaching age thirty-one, the claimant has disability insured status if the claimant is fully insured, the claimant has quarters of coverage in a least one-half of the quarters during the period between the claimant's twenty-first birthday and the onset of the claimant's disability, and the claimant has at least six quarters of coverage in the twelve-quarter period ending with the quarter the disability began if the period between the claimant's twenty-first birthday and the date of the onset of the disability is less than twelve quarters. In the third rule, if the claimant had previously established a period of disability before reaching age thirty-one, the claimant is insured if the claimant has quarters of coverage in at least one-half of the

calendar quarters in the period from the quarter after the claimant reached age twenty-one through the quarter in which the later period of disability began, as long as the claimant has at least six quarters of coverage in the twelve-quarter period ending with the quarter the claimant's disability began. The fourth rule of obtaining disability insured status only applies to statutory blindness (20 CFR 404.130).

"Fully insured" status for the above-cited rules is met if the claimant has at least six quarters of coverage and has at least one quarter of coverage for each calendar year elapsing after the claimant has reached age twenty-one (or for each year after 1950, if later) and before the year in which either the claimant reaches age sixty-two, the claimant's period of disability begins, the claimant's waiting period begins, or the claimant becomes entitled to disability insurance benefits (20 CFR 404.110, 404.132). In determining a period of quarters in the rules noted above, any quarter in which the claimant has established a period of disability is not counted unless the quarter is the first or last quarter of this period (20 CFR 404.130). In order to establish a period of disability, the claimant must have applied for and been granted a period of disability under the Regulations (20 CFR 404.320).

A "quarter of coverage" for years prior to 1978 is credited to a claimant if the claimant earned a least $50.00 in wages or was credited with at least $100.00 in self-employment income during that quarter (20 CFR 404.140(b)). If the claimant was paid at least $3,000.00 in wages in a calendar year before 1951, the claimant is credited with a quarter of coverage for each quarter in that calendar year (20 CFR 404.141(d)). For years after 1977, a claimant earns a quarter of coverage for each portion of the year's income which is equivalent to the requirements for one quarter of coverage during that year. For example, if the claimant earned twice as much as the monetary requirement for a quarter of coverage during a

specific year following 1977, the claimant earns two quarters of coverage for that year (20 CFR 404.140 (c)). The appendix to Subpart B of Part 404 shows the amount needed for one quarter of coverage for each year following 1978.

When determining a claimant's insured status and quarters of coverage, the administration uses the claimant's record of earnings. This record is considered evidence of the amounts of the claimant's earnings and the periods in which they were received (20 CFR 404.803(a)). A claimant may request a correction of an earnings record in writing. The request must be signed by the claimant and should state the period being questioned and describe or contain evidence showing that the record is incorrect (20 CFR 404.820 (b)). Moreover, the request must be filed within a time limit. The time limit is three years, three months, and fifteen days after any year in which the claimant received earnings being contested (20 CFR 404.802). A request is considered filed on the day it is received by a Social Security office or employee of the Social Security Administration (404.820 (d)). Once this time limit has passed, the claimant's earnings record becomes conclusive evidence of the claimant's income and wages (or lack of income or wages) for the year noted in the record (20 CFR 404.803(c)). Records may be corrected after the time limit ends, as long as the correction is to comply with a tax return showing correct wages, the claimant filed a written request for correction within the time period, the claimant applied for benefits within the time period, wages were transferred to or from the Railroad Retirement Board, wages are certified as earned from the Railroad Retirement Board, an investigation began before the time period ended, an error is present on the face of the record, fraud has occurred, or wages are assigned by court decree (20 CFR 404.822).

PROCEDURAL HISTORY

The claimant filed an application for disability insurance benefits and a period of disability on November 29, 1993. At that time, he alleged that he became unable to work on January 1, 1986 (Exhibit 2). His application was denied on the basis that he does not have enough quarters of coverage to obtain disability insured status. The claimant filed a request for reconsideration, asserting that he does have enough quarters of coverage. At that time, he also stated that the onset of his disability was January 1, 1968. (Exhibit 3). His request was denied, again because he does not have enough work credits to qualify for benefits. The issue of disability was not reached (Exhibit 5). He thereafter filed a request for hearing before an administrative law judge. He stated that he is disabled and that he has enough quarters to meet the requirements for disability (Exhibit 6). He was granted monthly retirement benefits beginning January 1994, after he reached age sixty-two (Exhibit 17).

The claimant also submitted several letters regarding his case. He issued one statement in April 1994 stating that he had requested records from Iowa on his behalf and that he was in the process of obtaining representation (Exhibit 8). In July 1994, he wrote a letter complaining that he had not been able to see his file (Exhibit 9). He sent another letter in April 1995 requesting that the record in his case be developed regarding his disability status (Exhibit 11). The undersigned sent a letter to the claimant in September 1995, explaining the issues in the case and requesting that he inform the office if he wished to proceed with a hearing or have the determination be made on the basis of the evidence in record (Exhibit 12). The claimant responded by requesting additional time to review the letter. In that request, he added that his disability began in the Summer of 1954, not in 1955. He requested that records be obtained from the Department of Veterans Affairs regarding

his disability status, including numerous hospitalizations for his mental impairment. (Exhibit 14). He later submitted sections of the Act regarding quarters of coverage for claimants under age thirty-one, arguing that the provisions in the Act violate the Fifth Amendment Due Process Clause (Exhibit 15). He sent another letter in October 1995, arguing that he had a period of disability before reaching age thirty-one, even though he admitted that he had never received or applied for benefits during this period of time. He also interpreted the Regulations to read that, if a claimant is not insured when his disability begins, his benefits begin as soon as he becomes insured, adding that he became disabled in 1954, but has gone through recovery and relapses in his condition over the last forty years (Exhibit 20). He did not submit any evidence regarding his earnings record or request a correction in his earnings record.

On October 20, 1995, the undersigned issued an unfavorable determination finding that the claimant does not meet the disability insured status requirements of the Act and is therefore not entitled to disability insurance benefits or a period of disability (Exhibit 16). The claimant appealed this determination to the Appeal's Council (Exhibit 22). He argued that he had not been provided with due process and that his record had not been adequately developed exhibit (27). On April 16, 1997, the Appeals Council vacated the decision and remanded the case to provide the claimant with an opportunity to review the evidence in his record and offer testimony at an oral hearing (Exhibit 32).

In the meantime, the claimant requested a copy of his earnings record and quarters of coverage data listing his employers' names and his wages (Exhibit 21). The claimant received a list of the amount of income he received for each year since 1945 and a list of employers (Exhibit 23). He objected to this information, stating that he wanted a list of quarters of

coverage he received while working. He also stated that he worked with the Union Pacific Railroad in Idaho in 1956 for a short period of time, and that he was in the Marine Corps in 1954. He also said that he worked at the Iowa Department of Banking in 1961, and that he worked for the State of Iowa's Auditor's Office in 1962 and 1963, but that his earnings record shows that he worked for the Department of Banking for the entire period of 1961 to 1963, which is incorrect according to the claimant. He contended that he had earned twenty quarters of coverage between 1952 and 1962 (Exhibit 23). The claimant again requested a detailed earnings statement (Exhibit 27), which he again received, along with certification of authenticity (Exhibits 29, 30, 31).

The undersigned sent a notice on June 18, 1997 that a hearing would be held in the case on July 14,1997 (Exhibit 33). The claimant requested a continuance of this hearing. His request was granted and the hearing was rescheduled for August 22, 1997 (Exhibit 34). On August 20, 1997, the claimant delivered a letter stating that he had not yet obtained counsel, but that he had taken significant steps to do so. The claimant stated in that letter that Lawrence D. Rohlfing, attorney at law, was representing him. He stated, though, that Mr. Rohlfing had withdrawn as his attorney one week before his hearing. He argued that he had a right to representation and that the hearing should be postponed to allow him to obtain representation (Exhibit 35). The hearing was held on August 22, 1997, as scheduled. The claimant refused to testify and left the hearing, stating that he did not have counsel. The undersigned informed the claimant at that time that the hearing would be rescheduled, but that he should obtain representation or appear with a representative. His hearing was scheduled for October 9, 1997 (Exhibit 40).

Before this date, the claimant again requested an itemized statement of his earnings for the period of 1937 through 1996

(Exhibit 38). He also submitted a letter in September 1997 stating that he had been attempting to gain information from the Department of Veterans Affairs and that he planned on seeing a psychiatrist, Robert Paul Liberman, M.D., for an evaluation of his mental condition (Exhibit 39). He later added that Dr. Liberman would be evaluating the claimant as soon as he obtained records from earlier treatment. He said that, as a result of the additional information he would be submitting, he would not be prepared for the October 9, 1997 hearing. Finally, he noted that he asked the State Bar and Administration to investigate the withdrawal of his attorney (Exhibit 42).

On October 1, 1997, the undersigned advised the claimant that the October 9, 1997 hearing would proceed. The undersigned further advised the claimant that the only issue to be determined in the case was his insured status, not his disability status or his former attorney's actions. The undersigned also advised the claimant that the Administration does not have the authority to compel his former attorney, Mr. Rohlfing, to represent him. The undersigned requested that the claimant specify his alleged disability onset date, since the record contains mention of several dates (Exhibit 43). The claimant wrote another letter dated September 24, 1997 stating that he had requested an earnings statement and that this request would take six to eight weeks to complete. He also said that Dr. Liberman had not yet evaluated his mental status. He provided information regarding records to be obtained regarding his disability status. Finally, he related that an investigation was still pending before the State Bar regarding the withdrawal of Mr. Rohlfing. He therefore requested a continuance of his hearing date for another six weeks (Exhibits 44, 46). The claimant also requested that subpoenas be issued to obtain testimony from Mr. Rohlfing and for documents from the Department of Veterans Affairs relating to his disability status. He asked that the undersigned

be disqualified from hearing the case due to bias he claimed is evidenced in a standard notice of hearing sent to the claimant (Exhibit 46). The undersigned granted his request for a continuance of the hearing, scheduling the hearing for November 18, 1997. At that time, though, the undersigned informed the claimant that the hearing would proceed on November 18, 1997. His request for subpoenas were denied (Exhibit 45). He was sent a notice of continued hearing on October 22, 1997 (Exhibit 48).

The claimant has since submitted letters reporting the manner in which Mr. Rohlfing withdrew, requesting evaluation of his mental condition, arguing that his medical condition should be developed, and alleging that the undersigned should be disqualified from deciding the case and that the testimony of Mr. Rohlfing would establish bias on the part of the undersigned (Exhibits 49, 52). At the hearing held on November 18, 1997, the claimant had not obtained representation. He refused to proceed in the hearing, stating that he needed a continuance in order to obtain counsel. He did not testify at the hearing, but he did confirm that he is alleging a disability onset date of June 1954.

The undersigned did not provide the claimant with any further continuances after the November 18, 1997 hearing date. The claimant was provided with over a three-month period of time from the date that his attorney withdrew from the case to the date of the last hearing in November to obtain representation. He was advised several times that the hearing would proceed and that he should attempt to obtain counsel. The claimant indicated at the final hearing that he was trying to obtain representation from E. Milton Frosburg, attorney at law. However, no indication existed in the record that Mr. Frosburg had agreed to represent the claimant. Indeed, Mr. Frosburg has not provided any suggestion that he has agreed to represent him. In an attempt to make a timely decision and

considering that the hearing date has been continued three times over the course of four months, the undersigned has thoroughly reviewed all of the claimant's allegations, examined the evidence of record, and issued a determination.

EVALUATION OF EVIDENCE AND RATIONALE

The only issue before the undersigned is the claimant's disability insured status for purposes of receiving disability insurance benefits and a period of disability. The claimant argues that medical records are necessary for the determination of this case. However, his application for benefits was denied solely on the basis of a lack of insured status, rather than his disability status. Indeed, his disability status was not reached in the initial and reconsideration determinations in the claimant's case (Exhibit 3). The only issue before the undersigned, then, is his insured status and medical records are not relevant in making this determination.

The claimant has alleged a disability onset date of June 1954. Under the Regulations, in order to be entitled to disability insurance benefits, the claimant must have enough social security earnings to be insured for disability, the claimant must apply, the claimant must have a disability or have had a disability that ended within the twelve-month period before the month in which the claimant applied, and the claimant must have been disabled for five full consecutive months, beginning with the month in which the claimant was both insured for disability and disabled (20 CFR 404.315). In this case, then, the claimant must establish that he had enough earnings to be insured for disability and that he was disabled on the date he states his disability began. If he does not have enough earnings, he is not entitled to disability insurance benefits.

As noted above, the claimant must be fully insured and either (a) have earned at least twenty quarters of coverage in the forty-quarter period ending with that quarter, (b) have quarters of coverage in at least one-half of the quarters during the period between the claimant's twenty-first birthday and onset of the claimant's disability of the claimant is under age thirty-one, and, if the period between the claimant's twenty-first birthday and the date of disability is less than twelve quarters, have at least six quarters of coverage in the twelve-quarter period ending with the quarter the disability began, or (c) have quarters of coverage in at least one-half of the calendar quarters in the period from the quarter after the claimant reached age twenty-one through the quarter in which the period of disability began if the claimant had previously established a period of disability before reaching age thirty-one, as long as the claimant has at least six quarters of coverage in the twelve-quarter period preceding the quarter the claimant's disability began (20 CFR 404.130). The claimant did not meet any of these circumstances as of his alleged disability onset date of June 1954. The claimant's earnings record shows that he only received a total of eight quarters of coverage within the forty quarters of coverage preceding June 1954. Though he was under thirty-one at that time (he was only twenty-two years old), he did not earn six quarters of coverage within the twelve-quarter period immediately preceding his alleged disability onset date, thereby failing to meet the requirements for the quarters of coverage necessary to be insured for disability benefits under the Regulations(Exhibit 7).

The claimant has argued that he established a period of disability prior to reaching age thirty-one and that the third rule of determining insured status should be applied. Yet, the claimant has never applied for disability insurance benefits or a period of disability in the past, as he has admitted (Exhibit 20). This rule, therefore, cannot be applied because the

claimant has not established a period of disability prior to his thirty-first birthday. Even if applied, the claimant still would remain uninsured. As noted above, he did not earn six quarters of coverage within the twelve quarter period immediately preceding his alleged disability onset date of June 1954, as necessary under 20 CFR 404.130(d) (Exhibits 7, 23). Therefore, the undersigned must find that the claimant is not insured for disability insurance benefits as of his alleged disability onset date of June 1954 and is therefore not entitled to disability insurance benefits or a period of disability under the Act.

The claimant has argued that his earnings records are incorrect and should be altered. He has submitted one record from the Railroad Retirement Board establishing entitlement to one quarter of coverage in 1956 (Exhibit 53). This document indicates that the claimant's earnings record was incorrect for one quarter in 1956. Under 20 CFR 404.822(d), his earnings record may be corrected to reflect this data. This correction has no bearing on the claimant's insured status for his alleged disability onset date of June 1954, though, since he received these earnings in 1956. Yet, he has not requested that his record be corrected in any other manner within the appropriate time limit. He has reported inaccuracies in earnings and employer's names in his earnings record (Exhibit 23), but he did not request a correction until more than thirty years had passed since the years in question, far longer than the time period allowed for correction of an earnings record of three years, three months, and fifteen days (20 CFR 404.802), 404.820, 404.821). Other than the Railroad Retirement Board earnings, none of the conditions exist for correcting other items in his record after the time limit passed, as an error does not appear on the face of the record, no fraud is apparent in his case, and no tax returns are indicative of incorrect information (20 CFR 404.822). Further, the

claimant has not established any basis for correcting the record. The claimant bears the responsibility of providing evidence to establish eligibility for benefits and for correcting his earnings record (20 CFR 404.704, 404.821). He has not established that his earnings record is incorrect other than his railroad earnings. On the contrary, the name of his employer in 1962 and 1963 does not affect his insured status. Therefore, other than a correction in his 1956 earnings, he has not established that his earnings record is incorrect. Moreover, he has not shown that correction of his earnings record would provide him with disability insured status.

The claimant has alleged other disability onset dates during the course of this case. He initially stated, for example, that he was disabled as of January 1, 1986 (Exhibit 3). He has also alleged a disability onset date of 1955 (Exhibit 13), but he later asserted that his date was an error and reported an onset date of June 1954 (Exhibit 14). Considering that the claimant appears to suffer from a severe mental impairment of schizophrenia and is not represented in this case, the undersigned has considered his other alleged disability onset dates as well in order to provide the claimant with a better understanding of the Regulatory requirements regarding his insured status, even though this consideration is not biding or directly relevant to the present determination. Regarding the claimant's initial allegation that he became disabled on January 1, 1986, the claimant was not insured for disability benefits because he had not obtained twenty quarters of coverage in the forty quarters preceding this date. He had only obtained thirteen quarters of coverage during the forty-quarter period preceding this alleged disability onset date. If asserting, though, an alleged disability onset date of January 1, 1968, his earnings records show that he did have disability insured status, as he had earned twenty quarters of coverage within the forty quarters preceding this onset date. Work activity following this date may influence a determination

regarding his disability status, but the undersigned has not reached any determination or considered this issue for the reasons cited above (Exhibit 7). After a thorough review of the relevant evidence of record, the undersigned must find that the claimant did not have disability insured status as of his alleged disability onset date of June 1954. Accordingly, he is not entitled to disability insurance benefits or a period of disability under the Act.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. The claimant has an alleged-disability onset date of June 1, 1954.

2. The claimant only earned a total of eight quarters of coverage in the forty quarters preceding his alleged disability onset date (20 CFR 404.140 (b), 404.141(d)).

3. The claimant was under age thirty-one at the time of his alleged disability onset date, but he did not earn six quarters of coverage during the twelve-quarter period immediately preceding his alleged disability onset date (20 CFR 404.130).

4. The claimant did not request a correction in his earnings record within the time period allowed under the Regulations (20 CFR 404.802).

5. The claimant has established that he is entitled to one additional quarter of coverage during the period of February through April 1956 for earnings of $224.10, earnings certified as received by the Railroad Retirement Board (20 CFR 404. 822 (d)).

6. The claimant has not established that nay other corrections to his earnings record are appropriate (20 CFR 404.820, 404.822).

7. The correction to the claimant's earnings record does not affect his disability insured status.

8. The claimant does not have enough Social Security quarters of coverage to be insured for disability (20 CFR 404.130).

9. The claimant is not entitled to disability insurance benefits or to a period of disability under the Act (20 CFR 404.315, 404.320).

DECISION

It is the determination of the Administrative Law Judge that the claimant was not insured for disability as of his alleged disability onset date of June 1, 1954 and is therefore not entitled to disability insurance benefits or a period of disability under sections 216(i) and 223 of the Social Security Act.

/s E. Steinman
Edward Steinman
Administrative Law Judge

J. Constitutional Material

Article II. further provides in relevant part:

> "Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." U.S. CONST. art. II, sec. 1, cl. 7

Article VI. also provides in relevant part:

"This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." U.S. CONST., art. VI, sec. 2.

The Seventh Amendment provides:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law. U.S. CONST. amend. VII.

The Fourteenth Amendment provides in relevant part:

> "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, sec. 1.

The Fourteenth Amendment also provides in relevant part:

> "[T]he right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced..." U.S. CONST. amend. XIV, sec. 2.

The Fourteenth Amendment also provides in relevant part:

> "No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." U.S. CONST. amend. XIV, sec. 3.

APPENDIX

K. Relevant Statutory Provisions

Relevant statutory provisions are:

5 U.S.C. Sec. 3331 – "Oath of office: An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath:

I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

5 U.S.C. Sec. 551 et seq. is reproduced at App., *infra*, .

The relevant provision of the full faith and credit statute, 28 U.S.C. Sec. 1738, provides:

> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form."

APPENDIX

L. Statutes

Sec. 402. - Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who -

(1)

is a fully insured individual (as defined in section 414(a) of this title),

(2)

has attained age 62, and

(3)

has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(l) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with -

(A)

in the case of an individual who has attained retirement age (as defined in section 416(l) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B)

in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(l) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w)

of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

42 U.S.C. Sec. 416(i)

i) Disability; period of disability

(1)

Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term "disability" means

(A)

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or

(B)

blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(B), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Commissioner of Social Security or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and

their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)

(A)

The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 423 of this title for one or more months in such period.

(B)

No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (l) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C)

A period of disability shall begin -

(i)

on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii)

if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D)

A period of disability shall end with the close of whichever of the following months is the earlier:

(i)

the month preceding the month in which the individual attains retirement age (as defined in subsection (l) of this section), or

(ii)

the month preceding

(I)

the termination month (as defined in section 423(a)(1) of this title), or, if earlier

(II)

the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 36-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).

(E)

Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F)

An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if -

(i)

in the case of an application filed by or on behalf of an individual with respect to a disability which ends after January 1968, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii)

in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968 -

(I)

such application is filed not more than 12 months after January 1968,

(II)

a previous application for a disability determination has been filed by or on behalf of such individual

(1)

in or before January 1968, and

(2)

not more than 36 months after the month in which his disability ended, and

(III)

the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G)

An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3)

The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) of this subsection are satisfied by an individual with respect to any quarter only if -

(A)

he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)

(i)

he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii)

if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii)

in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in paragraph (1)). For purposes of subparagraph (B) of this

paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

Sec. 421. - Disability determinations

42 U.S.C. Sec. 421(a)(1)

a) State agencies

(1)

In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Commissioner of Social Security in writing that it wishes to make such disability determinations commencing with such month as the Commissioner of Social Security and the State agree upon, but only if

(A)

the Commissioner of Social Security has not found, under subsection (b)(1) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and

(B)

the State has not notified the Commissioner of Social Security, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Commissioner of Social Security once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Commissioner

of Social Security may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

Sec. 421. - Disability determinations

42 U.S.C. Sec. 421(i)(1)

i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

(1)

In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

42 U.S.C. Sec. 423. - Disability insurance benefit payments

42 U.S.C. Sec. 423[c]1)(B)

(a) Disability insurance benefits

Definitions; insured status; waiting period

For purposes of this section -

(1)

An individual shall be insured for disability insurance benefits in any month if -

(A)

he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such month, and

(B)

(i)

he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii)

if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii)

in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is

blind (within the meaning of "blindness" as defined in section 416(i)(1) of this title). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.